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Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number:	VID114/2014
File Title:	Tobias Mitic v Oz Minerals Limited
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA

Dated: 7/12/2015 3:32:15 PM AEDT Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 17
Rule 8.05(1)(a)

Third~~Second~~ Further Amended Statement of Claim

No. VID 114 of 2014

Federal Court of Australia

District Registry: Victoria

Division: General

TOBIAS MITIC

Applicant

OZ MINERALS LIMITED (ACN 005 482 824)

Respondent

Filed pursuant to leave granted by Justice Middleton on 4 December 2015~~13 March~~ **2015**

Filed on behalf of (name & role of party) Tobias Mitic, Applicant
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[Version 2 form approved 09/05/2013]

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A. INTRODUCTION

I. The applicant and group members

1. The applicant:

(a) as at 7pm on 26 June 2008, was registered in the register of members maintained by Zinifex Limited (**Zinifex**) as the holder of 80,000 shares in Zinifex;

Particulars

Particulars of the applicant's Zinifex share trading history are set out at Annexure A.

(b) as consideration for his Zinifex holdings as at that date, acquired 255,448 shares in the respondent on 1 July 2008 by reason of the merger between the respondent and Zinifex described more fully in paragraphs 36(a) and 78 to 81 (inclusive) below; and

(c) commences these proceedings as a representative party pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) (**FCA**) on behalf of himself and all former Zinifex shareholders who:

(i). acquired shares in the respondent on 1 July 2008 as a result of the merger (**group members**);

(ii). are alleged to have suffered loss and damage as a result of the conduct of the respondent pleaded below; and

(iii). have not settled the claims that are the subject of this proceeding with the respondent.

II. The respondent

2. The respondent, at all material times:

(a) was and is a corporation registered pursuant to the *Corporations Act 2001* (Cth) (**Corporations Act**) and capable of being sued;

(b) prior to 23 July 2008 (at which time it ~~changes~~ changed its name to ~~Oz~~ OZ Minerals Limited), was known as Oxiana Limited (**Oxiana**) (but will be referred to at all times in the pleading as the respondent unless it is necessary or convenient to refer to Oxiana);

(c) during the period from 28 February 2008 to 1 July 2008 (**Relevant Period**), had on issue securities which traded on the Australian ~~Stock~~ Securities Exchange (**ASX**) under the designation "OXL", which listed securities were Enhanced Disclosure Securities within the meaning of section 111AE of the Corporations Act;

(d) as the issuer of the securities referred to in (b):

(i). was listed on the ASX;

(ii). was subject to and bound by the ASX Listing Rules;

(iii). was a listed disclosing entity within the meaning of section 111AL of the Corporations Act;

(iv). was subject to, the continuous disclosure requirements of section 674 of the Corporations Act (**Continuous Disclosure Requirements**);

(e) was and is:

(i). a trading corporation within the meaning of the *Australian Securities and Investments Commissions Act 2001* (Cth) (**ASIC Act**); and

(ii). a person for the purposes of section 9 of the *Fair Trading Act 1999* (Vic) (**FTA**) (as it was during the Relevant Period).

B. THE USD FINANCE FACILITIES

I. Loan Note Subscription Agreement

3. By a Loan Note Subscription Agreement (**LNSA**) made on 20 June 2007 between:

   (a) Oxiana Finance Pty Ltd (**Oxiana Finance**) (a wholly owned subsidiary of the respondent) as Issuer;

   (b) the respondent, Oxiana Finance, Oxiana Prominent Hill Pty Ltd, Oxiana Golden Grove Pty Ltd, Oxiana Golden Grove (Finance) Pty Ltd, Minotaur Resources Holdings Pty Ltd, Minex (SA) Pty Ltd, Oxiana Golden Grove (Holdings) Ply Ltd and Oxiana Finance (Holdings) Pty Ltd as initial Guarantors;

   (c) a syndicate of eight banks comprising Australia and New Zealand Banking Group, Limited (**ANZ**), BNP Paribas - Melbourne Branch (**BNP**), BOS International (Australia) Ltd (**BOSI**), China Construction Bank Corporation - Hong Kong Branch (**China Construction Bank**), Commonwealth Bank of Australia (**CBA**), Bayerische Hypo-und Vereinsbank AG - Singapore Branch (**HVB**), National Australia Bank Limited (**NAB**) and the Royal Bank of Scotland plc - Australia Branch (**RBS**) as Initial Participants;

   (d) ANZ as Fronting Bank, Mandated Lead Arranger and Agent;

   (e) ANZ, BNP and CBA as Initial Hedge Counterparties; and

   (f) ANZ Fiduciary Services Pty Ltd as Security Trustee;

(together, **Initial Participants**) agreed to provide Oxiana Finance with certain Facilities (as defined in the LNSA).

4. The LNSA provided for four facilities with total possible borrowings up to an aggregate of USD $500 million and A$25 million as follows:

   (a) Prominent Hill Loan Note Facility - USD $220 million;

   (b) Revolving Loan Note Facility - USD $200 million;

   (c) Debt Support Facility- USD $80 million; and

   (d) Issuance Facility - A$25 million.

5. In February 2008 the participation of China Construction Bank under the LNSA was assigned to CBA (which then assigned USD $20 million to NAB), and at all relevant times thereafter the Participants under the LNSA were ANZ, BNP, BOSI, CBA, HVB, NAB and RBS (**LNSA Lenders**).

6. On 28 February 2008 the LNSA was amended and restated.

Particulars

The amended and restated LNSA is in writing. Hereinafter references to the LNSA are references to the LNSA as amended and restated on 28 February 2008.

7. The LNSA provided that it was an Event of Default if an Obligor fails:

   (a) to pay an amount payable by it under a Finance Document (which was defined to include the Refinancing Agreement referred to at paragraph 12 below) when due or, where such failure to pay is caused by an administrative or technical error, within two Business Days of that due date;

   (b) to comply with any of its other obligations under a Finance Document except, where in the opinion of the Agent that failure can be remedied within ten Business Days, if it remedies the failure within that period.

Particulars

Clause 25.1(a) of the LNSA.

7A. The LNSA provided that it was an Event of Default if any finance debt (as defined in the LNSA) of an Obligor totalling at least A$1 million or its equivalent is not paid when due (or within an applicable grace period) unless under genuine dispute, or becomes due and payable before its stated maturity or expiry.

Particulars

Clause 25.1(c)(i) of the LNSA.

8. The LNSA provided that in addition to other applicable rights provided by law or any Transaction Document, at any time while an Event of Default subsists the Agent may and shall if the Majority Participants direct do the following (amongst other things):

   (a) by notice to the Issuer declare the Secured Money immediately due and payable, and the Issuer shall immediately pay the Secured Money (including total face amount of all outstanding Performance Bonds and Bank Guarantees):

   (b) by notice to the Issuer, cancel the commitments.

Particulars

Clause 25.2 of the LNSA.

II. Further finance agreements entered into by the respondent on 28 February 2008

The Mezzanine Facility

9. By agreement made on 28 February 2008 between the respondent as the Company and Original Borrower, Oxiana Finance, Oxiana Golden Grove Pty Ltd, Oxiana Prominent Hill Operation Pty Ltd (formerly Minex (SA) Ply Ltd), Oxiana Prominent Hill Ply Ltd, Oxiana Finance (Holdings) Ply Ltd, Oxiana Golden Grove (Holdings) Pty Ltd, Oxiana Golden

Grove (Finance) Pty Ltd and Mintour Resources Holdings Ply Ltd as Original Guarantors, RBS as Agent, Arranger and Original Lender and ANZ as Arranger and Original Lender (**Mezzanine Facility**), RBS and ANZ (**Mezzanine Lenders**) agreed to provide the respondent with facilities for cash up to a maximum amount of USD$140 million.

(The LNSA facilities and the Mezzanine Facility will together be referred to as the **US Debt Facilities**).

Particulars

The Mezzanine Facility is in writing.

9A. All cash provided to the respondent under the Mezzanine Facility was repayable by no later than 30 November 2008 (**November 2008 Deadline**).

Particulars

Mezzanine Facility, clauses 6 and 9.1(e), referring to the definition of "Termination Date" in clause 1.1.

10. The Mezzanine Facility provided that it was an Event of Default if an Obligor fails:

(a) to pay on the due date any amount payable pursuant to a Finance Document (defined to include Refinancing Agreement entered into by the respondent on the same day further described in paragraphs 12 and 13 below), or where such failure is caused by administrative or technical error beyond the control of the Obligors, within 2 Business Days of that due date;

(b) to comply with any of its other obligations under a Finance Document, unless the failure to comply can be remedied within 10 Business Days of the Company receiving notice or becoming aware of the failure, whichever is the earlier.

Particulars

Clauses 22.1 and 22.2 of the Mezzanine Facility.

11. The Mezzanine Facility provided that on and at any time after the occurrence of an Event of Default which is continuing, the Agent may and shall if so directed by the Majority Lenders, by notice to the Company:

    (a) cancel the commitments;

    (b) declare that all or part of the Loans, together with accrued, interest and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable; and/or

    (c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Agent acting on the instructions of the Majority Lenders.

Particulars

Clause 22.13 of the Mezzanine Facility.

~~*(i) As at the date of filing the statement of claim the applicant does not have a copy of the Mezzanine Facility and reserves the right to supplement these particulars after discovery.*~~

The Refinancing Agreement – material information

12. On or about 28 February 2008, the respondent entered into an agreement by which it was obliged to undertake a refinancing of the US Debt Facilities (**Refinancing Agreement**).

Particulars

The Refinancing Agreement was written and contained in a document titled 'Intercreditor Deed' being an agreement between, amongst, others, Oxiana Finance as

issuer and Obligor, the respondent as Borrower and Obligor, certain of the respondent's controlled entities as Obligors, ANZ as agent for the LNSA Lenders, RBS as agent for the Mezzanine Lenders and ANZ Fiduciary Services Pty Ltd as Security Trustee.

13. A term of the Refinancing Agreement obliged the respondent to refinance its outstanding drawings under the US Debt Facilities by 8 August 2008, subject to the Security Trustee (acting on the instructions of all of the Beneficiaries and the Mezzanine Financiers under the Refinancing Agreement and/or the LNSA Lenders) agreeing to an extension of that date, with such agreement not to be unreasonably withheld if the respondent (and other Obligors under the Refinancing Agreement) could demonstrate that they had used their best endeavours to procure the refinancing (**8 August Refinancing Deadline**).

Particulars

(a) Clause 4.6~~(a)~~ of the Intercreditor Deed.

(b) Definitions of "Refinancing" and "Refinancing Date".

C. RELEVANT ANNOUNCEMENTS, PUBLICATIONS AND REPRESENTATIONS BY THE RESPONDENT

I. 2007 Annual Results

14. On 20 February 2008, the respondent lodged with the ASX:

(a) a 113 page document entitled "Oxiana Limited Financial Report 31 December 2007" (**2007 Financial Report**);

(b) a 25 page document entitled "Oxiana limited Financial Results 31 Dec 2007 Presentation" (**2007 Results Presentation**); and

(c) a 3 page document entitled "Oxiana Limited Financial Results Summary 31 December 2007" (**2007 Results Summary**).

(together, the "**2007 Annual Results**")

15. The respondent's 2007 Annual Results represented to that the respondent's total interest bearing liabilities as at 31 December 2007 were approximately A$420.830 million and comprised the following facilities:

	Facility Type	**Denomination**	**Nominal Interest Rate**	**Maturity**	**AUD Value**
1	Secured Bank Loan	USD	LIBOR* + 1.25%	2012	$218.138m
2	Secured Bank Loan	USD	LIBOR + 2.5%	2011	$98.354m
3	Convertible Notes	USD	5.25%	2012	$104.089m
4	Finance Lease	AUD	11.41%	2009	$0.036m
5	Finance Lease	USD	0.80%	2008	$0.214m
				Total	**$420.831m**

* LIBOR = London Interbank Offered Rate. LIBOR is often used as a benchmark for the cost of funds by financial institutions and is commonly referred to in corporate financing term sheets.

Particulars

The representation was contained on page 69 of the 2007 Financial Report.

16. The respondent's 2007 Annual Results categorised its interest bearing liabilities as at 31 December 2007 as being:

(a) current interest bearing liabilities of A$154.421 million;

(b) non-current interest bearing liabilities of A$266.409 million.

Particulars

This categorisation, and the relevant figures, appeared on pages 68 - 69 of the 2007 Financial Report and on page 3 of the 2007 Results Summary.

17. Of the interest bearing liabilities reported in the respondent's 2007 Annual Results:

(a) the current interest bearing liabilities included $125,456 million drawn on the LNSA; and

(b) the non-current interest bearing liabilities included $92,682 million drawn on the LNSA.

Particulars

This information is recorded in page 68 of the 2007 Financial Report at note 22.

II. Material Information - effect of the refinancing agreement

18. By reason of its entry into the amended and restated LNSA, the Mezzanine Facility, and the Refinancing Agreement, as and from 28 February 2008 and throughout the Relevant Period:

(a) the respondent no longer held an unconditional right to defer repayment of amounts owing under its US Debt Facilities for a period of at least twelve months;

(b) from on or about 28 February 2008, the respondent's liabilities pursuant to the US Debt Facilities became current liabilities.

Particulars

The applicant repeats the matters pleaded and particularised in paragraphs 10 to 13 above.

19. By no later than 31 March 2008:

(a) Oxiana Finance had drawn down USD $~~4~~20 million under the LNSA (being the full US$220 million available under the Prominent Hill Loan Note Facility and the $200 Million available under the Revolving Loan Note Facility);

(b) Oxiana ~~Finance~~ had drawn down USD $140 million under the Mezzanine Facility;

(b1) the respondent (or an entity controlled by the respondent) owed approximately A$28.741 million (USD $31.414 million) on a USD debt facility for its Sepon project which was properly classified as a current liability; and

(c) the respondent had current interest bearing liabilities in excess of $USD580 million.

(The matters referred to in paragraphs 18 and 19 will be referred to collectively as the **Current Liability Position**).

20. As a result of the matters pleaded in paragraphs 10 to 13 above, a failure of the respondent and the other Obligors either to repay all cash owing under the Mezzanine Facility by the November 2008 Deadline, or to undertake a refinancing in accordance with clause 4.6 of the Refinancing Agreement, would trigger the Event of Default provisions (**Cross Default Risk**) in each of:

(a) the LNSA (pleaded at paragraphs 3 to 8 above) with the effect that all of the Secured Money (as defined in the LNSA) would, at the option of the Majority Participants become immediately payable; and

(b) the Mezzanine Facility (as pleaded at paragraphs 9 to 11 above) with the effect that all of the USD $140 million drawn under the Mezzanine Facility and all other amounts outstanding under the Finance Documents (including the USD $520 million owing under the LNSA) would become immediately payable ~~(Cross Default Risk)~~.

III. Announcement of proposed merger between the respondent and Zinifex

21. On 3 March 2008, the respondent and Zinifex:

(a) published and lodged with the ASX a document entitled *"Australian Stock Exchange and Media Release: Oxiana and Zinifex to Merge to Create a Major Diversified Mining Company"* dated 3 March 2008 (**3 March Announcement**) in which they announced that they had entered into an agreement to merge their businesses; and

(b) gave a joint investor briefing in relation to the proposed merger which was webcast live on the websites of each of the respondent and Zinifex (**3 March Briefing**).

Particulars of 21(b)

*The presentation was given by Owen Hegarty (then Chief Executive Officer, Oxiana) (**Mr Hegarty**) and Andrew Michelmore (then Managing Director and CEO of Zinifex) (**Mr Michelmore**).*

21A. In the 3 March Announcement, the respondent made the following statements:

(a) "The merger terms reflect our Boards' mutual judgment that relative market valuations are the appropriate basis to ensure both groups of shareholders receive equivalent value in the proposed merger. We took into account the volume/weighted average prices of both companies over the period during which the Boards of Oxiana and Zinifex have been actively considering the proposed merger, due diligence and the prospects of each company" (**Merger Consideration Statements**);

Particulars

Page 2 of the 3 March Announcement.

(b) "The combined group will have a very strong balance sheet and will be well equipped to succeed in any market environment" (**First Balance Sheet Statement**);

Particulars

Page 3 of the 3 March Announcement.

22. By the 3 March Announcement and the 3 March Briefing the respondent:

(a) expressly represented that the volume weighted prices of the respondent and Zinifex during the period during which the respondent and Zinifex had been actively considering the proposed merger had been taken into account in determining the relative market valuation of each company in order to ensure that both groups of shareholders received equivalent value in the proposed merger;

Particulars

The representation was express and in writing and conveyed by the Merger Consideration Statements pleaded and particularised in paragraph 21A(a).

(b) implicitly represented that the volume weighted average price of the respondent taken into account for this purpose was struck in circumstances in which the respondent had complied with Continuous Disclosure Requirements and the market had been fully informed of all Material Information,

Particulars

The representation was to be implied in circumstances in which:

(i). the respondent was under a statutory duty to comply with the Continuous Disclosure Requirements;

(ii). a comparison of the volume weighted prices of the respondent and Zinifex during the period during which the they had been actively considering the proposed

merger could only provide fair and reliable measure of the comparative worth of the two companies if the market had, during that period, been apprised of all Material Information about each company in accordance with the Continuous Disclosure Requirements;

(iii). the respondent did not disclose in the announcement that it had not complied with the Continuous Disclosure Requirements.

(the representations pleaded in (a) and (b) above will be referred to as the **Fair Market Price Representation**);

(c) represented:

(i). expressly that it believed that the relative market valuations of Zinifex and the respondent were the appropriate basis to ensure both groups of shareholders received equivalent value in the proposed merger; and

Particulars

The representation was express and in writing and conveyed by the first sentence of the Merger Consideration Statements pleaded and particularised in paragraph 21A(a) above.

(ii). implicitly that it had reasonable grounds for those beliefs.

Particulars

The representation arose by necessary implication from the context in which the representation was made, namely:

A. in an announcement published on the ASX; and

B. without express qualification or caveats as to the belief held by the respondent;

C. in circumstances in which:

(i). compliance with the Continuous Disclosure Requirements required the board of the respondent to maintain a reasonable level of familiarity with the state of its business (including its accounts, balance sheet and AASB reporting requirements) and to make reasonable enquiries into such matters prior to making any public announcement and to disclose to the ASX Material Information as soon as it became aware of it; and

(ii). market valuations of Zinifex and the respondent could not be an appropriate basis to determine the terms of the proposed merger and to ensure both groups of shareholders received equivalent value in the proposed merger in circumstances in which one or both companies had not complied with the Continuous Disclosure Obligations; and

(iii). the board did not disclose in or contemporaneously with the 3 March Announcement that it had not maintained a reasonable level of familiarity with the state of its business (including its accounts, balance sheet and AASB reporting requirements) or made reasonable enquiries into such matters prior to making the announcement.

(the representations pleaded in (c)(i) and (c)(ii) above will be referred to, separately or together, as the **Relative Market Value Representation**);

(d) expressly represented that the combined group would have a very strong balance sheet and would be very well equipped to succeed in any market environment (**First Balance Sheet Representation**);

Particulars

The representation was conveyed by the First Balance Sheet Statement pleaded at subparagraph 21A(b) above.

(e) implicitly represented that the board of the respondent believed that the combined group would have a very strong balance sheet and would be very well equipped to succeed in any market environment and that the board of the respondent had reasonable grounds for that belief,

(Implied First Balance Sheet Representation);

Particulars

The representation arose by necessary implication from the context in which the representation was made namely:

(i) in an announcement published on the ASX; and

(ii) without express qualification or caveats as to the belief held by the respondent;

(iii) in circumstances in which:

A. compliance with the Continuous Disclosure Requirements required the board of the respondent to maintain a reasonable level of familiarity with the state of its business (including its accounts, balance sheet and AASB reporting requirements) and to make reasonable enquiries into such matters prior to making any public announcement;

B. the board did not disclose in or contemporaneously with the 3 March Announcement that it had not maintained a reasonable level of familiarity with the state of its business (including its accounts, balance sheet and AASB reporting requirements) or made reasonable enquiries into such matters prior to making the announcement.

IV. Quarterly Report presentation

23. On 16 April 2008 the respondent:

(a) lodged with the ASX a document entitled "Quarterly Report for the three months ending 31 March 2008 (**Q3 Report**) and a slide presentation entitled "Oxiana Limited First Quarter Report 2008 (**Q3 Slide Presentation**);

(b) presented the Quarterly Report to investors via webcast on the respondent's website (**16 April Briefing**) during which Hegarty presented the Q3 Quarterly Report Slide Presentation.

Particulars

The representation was express and in writing on page 8 of the Q3 Report.

24. During the 16 April Briefing the respondent (Mr Hegarty):

(a) had the following exchange with Nathan Littlewood of Credit Suisse (**NL**):

NL:	I notice from your December accounts that you had roughly, you had three hundred and thirty million of available debt facilities and that you've drawn down two hundred and twenty of that during the quarter, leaving presumably, about a 110 [$110m] at the moment. I was just wondering if you could explain to me the rationale behind the newly established debt facility. Is it more attractive interest rates?
Mr Hegarty:	Oh that was a hundred and forty, the hundred and forty million. Oh that was really a, just to ensure that we, with the increase in the costs there, going back into October last year when we increased the Prominent Hill estimate from 775 [$775 million], I think, to 1080 [$1080 million].
NL:	Yeah.
Mr Hegarty:	An increase of three hundred odd million Aussie dollars we also increased the debt facilities at that time by about an additional hundred and forty, so it was really simply to, to, to cater for that. We're well and truly within all of that so we don't have any issues there. We've got, as I say, we've got good, good facilities there, plenty of cash and cash flow coming out so it's well and truly under control.

(**First 16 April Debt Position Exchange**).

(b) had the following exchange with Geoff Breen of RBC Capital Markets:

GB:	Can I revisit the debt situation? Can you give us a bit of guidance on how much more to be spent maybe group wise, I'm not sure, by, by June? It looks like, just looking at these numbers you've given us that you've got, what, about three hundred million of facility left on the five twenty five million debt. Can you just round that out for me?
Mr Hegarty:	Oh look Geoff I think you're right. The three hundred million dollars is right. I don't have those numbers at the, at our finger tips. I've seen them recently, but we're very comfortable. I mean with the cash and cash flow, the cash we've got in the bank, the cash flow that's coming at us and the, and the cash out in respect of Prom Hill, Martabe and other, other projects there, well and truly catered for by those existing debt facilities. So we're in very good shape and we can come back to you on that.

(**Second 16 April Debt Position Exchange**).

25. During the 16 April Briefing the respondent represented:

(a) that the respondent had good debt facilities and its debt position was "well and truly under control" (**First 16 April Debt Representation**);

Particulars

The representation was express and conveyed orally during the First 16 April Debt Position Exchange by Mr Hegarty.

(a1) in the alternative to the representation pleaded in subparagraph 25(a), that:

(i). in the respondent's opinion, it had good debt facilities and its debt position was "well and truly under control"; and

(ii). it had reasonable grounds for holding that opinion,

(together, the **Debt Under Control Opinion Representation**);

Particulars

A. *The represented opinion (subparagraph 25(a1)(i)) was partly express and partly to be implied. In so far as it was express it was conveyed orally by Mr Hegarty during the First 16 April Debt Position Exchange pleaded in subparagraph 24(a) above. In so far as it was implied it arose from the language of Mr Hegarty during the First 16 April Debt Position Exchange and the subject matter and context of that exchange.*

B. *The representation of reasonable grounds (subparagraph 25(a1)(ii)) was to be implied in circumstances in which the associated representation of opinion was made:*

1. *by the CEO of the respondent who could be presumed to have familiarity with the company's business and balance sheet;*

2. *in a telephone briefing webcast on the respondent's website attended by and aimed at investment analysts, investors, financial reporters and predominantly sophisticated members of the investment and financial reporting community (with the audio of the meeting to be made publicly available on the internet after the meeting);*

3. *without qualifications or caveats as to the reliability of the opinion so expressed;*

4. *in circumstances in which:*

    I. *the opinion expressed went to the present state of the respondent's balance sheet and to the company's ability to service and/or repay its debts from future cash flows which were matters discernable to or assessable by Mr Hegarty and those advising him;*

II. *the respondent knew that the members of the audience of the briefing or those who later streamed the audio of the meeting off the internet, or those to whom such persons reported, would rely on any statements made during the course of the briefing concerning the prospects of the company in making investment decisions;*

III. *the respondent was subject to the Continuous Disclosure Obligations such that its directors (including Mr Hegarty) were obliged to maintain a reasonable level of familiarity with the company's business and balance sheet and to disclose to the public any information concerning its balance sheet of which it was 'aware' within the meaning of ASX Listing Rule 19.12;*

IV. *the respondent operated in a market regulated by, inter alia, section 1041H of the Corporations Act and section 12DA of the ASIC Act both of which prohibited misleading or deceptive conduct or conduct likely to mislead or deceive in relation to financial products and services;*

V. *members of the audience of the briefing (including those listening to the audio after the event) would have been aware that the respondent was subject to the Continuous Disclosure Obligations and relevant prohibitions on misleading or deceptive conduct and would have assumed accordingly that the respondent had reasonable grounds for the opinions expressed during the briefing in the absence of the respondent appropriately qualifying those opinions.*

(b) that the respondent had about $300 million in undrawn credit (**Second 16 April Debt Representation**);

Particulars

The representation was express and conveyed orally during the Second 16 April Debt Position Exchange by Mr Hegarty.

(c) that the respondent's debt position was "very comfortable" (**Third 16 April Debt Representation**);

Particulars

The representation was express and conveyed orally during the Second 16 April Debt Position Exchange by Mr Hegarty.

(c1) in the alternative to the representation pleaded in subparagraph 25(c), that:

(i). in the respondent's opinion, its debt position was "very comfortable"; and

(ii). it had reasonable grounds for holding that opinion,

(together, the **Comfortable Debt Position Opinion Representation**).

Particulars

A. *The represented opinion (subparagraph 25(c1)(i)) was partly express and partly to be implied. In so far as it was express it was conveyed orally by Mr Hegarty during the Second 16 April Debt Position Exchange pleaded in subparagraph 24(b) above. In so far as it was implied it arose from the language of Mr Hegarty during the Second 16 April Debt Position Exchange and the subject matter and context of that exchange.*

B. As to the implied representation of reasonable grounds (subparagraph 25(c1)(ii)), the applicant repeats particular B. to subparagraph 25(a1) above.

V. Respondent's 17 April 2008 Annual General Meeting

26. On 17 April 2008 the respondent held its annual general meeting which was webcast live on the respondent's website (**17 April 2008 AGM**).

26A. During the 17 April 2008 AGM, the respondent (Mr Hegarty) made the following statement:

> I can report on behalf of the Board that your company is in very sound financial shape, very little debt, good cash, good strong cash flow and no hedging, so we're in a very, very sound financial position" (**AGM Statement**).

27. Further or in the alternative, during the 17 April 2008 AGM, the respondent represented that the respondent was in a very sound financial position with very little debt and strong cash flows (**AGM Representation**).

Particulars

The representation was express and conveyed by the AGM Statement.

27A. In the alternative to the matters pleaded in paragraph 27, during the 17 April 2008 AGM, the respondent represented that:

(a) in the respondent's opinion, it was in a very sound financial position with very little debt and strong cash flows; and

(b) it had reasonable grounds for holding that opinion,

(**AGM Debt Opinion Representation**).

Particulars

(i). *The represented opinion (subparagraph 27A(a)) was partly express and partly to be implied. In so far as it was express it was conveyed orally by Mr Hegarty during the AGM Statement pleaded in subparagraph 26A above. In so far as it was implied it arose from the language of the AGM Statement and the subject matter and context of that statement.*

(ii). *The representation as to reasonable grounds (subparagraph 27A(b) was to be implied in circumstances in which the associated representation of opinion was made:*

A. *by the CEO of the respondent who could be presumed to have familiarity with the company's business and balance sheet;*

B. *expressly "on behalf of the board", the members of which could each be presumed to have familiarity with the company's business and balance sheet;*

C. *by the CEO of the respondent at the company's AGM which was attended by and aimed at investment analysts, investors, financial reporters and predominantly sophisticated members of the investment and financial reporting community;*

D. *without qualifications of caveats as to the reliability of the opinion so expressed;*

E. *in circumstances in which:*

1. *the AGM was broadcast to the public via live webcast on the respondent's website (with the audio of the meeting to be made publicly available on the internet after the meeting);*

2. *the represented opinion went to the present state of the respondent's balance sheet and to the company's ability to service and/or repay its*

debts from future cash flows which were matters discernable to or assessable by Mr Hegarty and the board of the respondent and those advising them;

3. *the respondent knew that the members of the audience at the AGM or those watching via webcast or streaming the audio of the meeting after the event, or those to whom such persons reported, would rely on any statements made concerning the prospects of the company in making investment decisions;*

4. *the respondent was subject to the Continuous Disclosure Obligations such that its directors (including Mr Hegarty) were obliged to maintain a reasonable degree of familiarity with the company's business and balance sheet;*

5. *the respondent operated in a market regulated by, inter alia, section 1041H of the Corporations Act and section 12DA of the ASIC Act both of which prohibited misleading or deceptive conduct or conduct likely to mislead or deceive in relation to financial products and services;*

6. *members of the audience at the AGM (including those listening to the audio after the event) would have been aware that the respondent was subject to the Continuous Disclosure Obligations and relevant prohibitions on misleading or deceptive conduct and would have assumed accordingly that the respondent had reasonable grounds for the opinions expressed during the briefing in the absence of the respondent appropriately qualifying those opinions.*

VI. Scheme Booklet

28. On or about 12 May 2008, Zinifex lodged with the ASX and distributed or made available to its shareholders the following documents jointly prepared by the respondent and Zinifex:

(a) document entitled "Explanatory Memorandum for the Scheme of Arrangement in relation to the proposed merger of Zinifex Limited and Oxiana Limited" dated 9 May 2008 (**Scheme Booklet**); and

(b) document entitled "Scheme Booklet Supplement for the Scheme of Arrangement in relation to the proposed merger of Zinifex Limited and Oxiana Limited" (**Scheme Booklet Supplement**).

29. The respondent prepared the information in the Scheme Booklet defined as "Oxiana Information", which included:

(a) all information contained in Part 7 of the Scheme Booklet (entitled "Profile of Oxiana"); and

(b) the information in Parts 8 and 9 of the Scheme Booklet to the extent that the respondent had contributed to that information.

Particulars

Scheme Booklet Glossary, page 194 (definition of "Oxiana Information").

29A In Part 7 of the Scheme Booklet, the respondent:

(a) published the following text at the commencement of Part 7.6:

CONTINUOUSLY DISCLOSING ENTITY

Oxiana is a company listed on ASX and is subject to the periodic and continuous disclosure requirements of the Corporations Act and the Listing Rules. Broadly these obligations require Oxiana to announce price sensitive information as soon as it becomes aware of this information, subject to exceptions for certain confidential information.

Copies of the following documents may be downloaded from ASX's website, www.asx.com.au (ASX code: OXR):

— Oxiana's financial results for the 12 months ended 31 December 2007;

— Oxiana's 2007 Annual Report for the period ended 31 December 2007;

— Oxiana's Quarterly Report for the quarter ended 31 March 2008; and

— Any continuous disclosure notices given by Oxiana after the release of its last annual report and before lodgement of this document with ASIC.

Further announcements concerning developments at Oxiana will also be made available on ASX at www.asx.com.au after the date of this document. Copies of all other documents lodged with ASIC in relation to Oxiana may also be obtained from, or inspected at, an ASIC office.

(Continuous Disclosure Statement).

(b) published the following text at the commencement of Part 7.8:

MATERIAL CHANGES IN THE FINANCIAL POSITION OF OXIANA

During March 2008 Oxiana has drawn down $245 million under the existing $584 million debt facility to finance the development of the Prominent Hill project. In addition during March 2008 Oxiana has drawn down a newly established short-term debt facility of $149 million, primarily for the financing of the Prominent Hill project.

Within the knowledge of the directors of Oxiana and other than as disclosed in this document or as disclosed in the Oxiana Quarterly Report for the quarter ended 31 March 2008, the financial position of Oxiana has not materially changed since 31 December 2007, being the date of the last audited balance sheet of Oxiana,

(No Material Change Statement).

(c) published the following text at page 106 in Part 9.3 of the document:

h) Financing risks

...

Oxiana and the Merged Group

To fund the Prominent Hill and Golden Grove projects, Oxiana has secured financing under a loan note facility with a consortium of financial institutions of US$500 million and a US$140 million facility with the Royal Bank of Scotland and Australia and New Zealand Banking Group Limited. Refinancing of these facilities is planned to be completed by November 2008; but there can be no assurance that this will occur within that timeframe,

(Financing Risks Statement).

30. The Oxiana Information included:

(a) an express representation that, as at the date of the Scheme Booklet, the respondent had complied with the Continuous Disclosure Requirements and that all Material Information had been disclosed in:

(i). the 2007 Financial Report;

(ii). the 2007 Annual Results;

(iii). the Q3 Quarterly Report; and

(iv). any continuous disclosure notices given by the respondent between the release of the 2007 Annual Results and the lodgement of the Scheme Booklet with the ASX.

(the **Continuous Disclosure Representation**)

Particulars

The representation was conveyed in writing by the Continuous Disclosure Statement (pleaded at [29A(a)]) and the No Material Change Statement (pleaded at [29A(b)]).

(b) [Intentionally blank.]

(c) an:

(i). express representation that within the knowledge of the directors of the respondent and other than disclosed in the Scheme Booklet or the Q3 Quarterly Report, the financial position of the respondent had not materially changed since 31 December 2007; and

Particulars

The representation was conveyed in writing by the No Material Change Statement (pleaded at [29A(b)]).

(ii). implied representation that the directors of the respondent had reasonable grounds for stating that, within the knowledge of the directors of the respondent and other than disclosed in the Scheme Booklet or the Q3 Quarterly Report, the financial position of the respondent had not materially changed since 31 December 2007,

Particulars

The representation arose by necessary implication in circumstances in which:

A. *the respondent made the by the Continuous Disclosure Statement (pleaded at [29A(a)]) and the No Material Change Statement (pleaded at [29A(b)]);*
B. *the respondent was under a statutory duty to comply with the Continuous Disclosure Requirements;*
C. *compliance with the respondent's Continuous Disclosure Obligations required the board of respondent to maintain a reasonable level of familiarity with the state of its business (including its accounts, the Australian Accounting Standards and the state of its current and non-current liabilities) and to make reasonable enquiries into such matters prior to making any public announcement; and*
D. *the respondent did not disclose in the Scheme Booklet that it had not complied with the Continuous Disclosure Requirements.*

(the representations pleaded in subparagraphs 30(c)(i) and 30(c)(ii) above will be referred to, together or separately, as the **No Material Change Representation**);

(d) an express representation that, as at the date of preparation of the Scheme Booklet, the respondent had current interest-bearing liabilities of A$303.4 million (the **Current Liabilities Representation**);

Particulars

The representation was in writing and constituted by:

(i). *The table on page 79 (Part 7.7) of the Scheme Booklet which listed the respondent's current interest bearing liabilities as at 31 December 2007 as being A$154 million; and*

(ii). *The No Material Change Statement pleaded at subparagraph [29A(b)] above, in so far as it referred to the respondent having drawn down a newly established "short-term" debt facility of $149 million.*

(e) a partly express and partly implied representation that the respondent planned to refinance the liabilities owing under the US Debt Facilities by November 2008, but that it was under no obligation to do so (**Planned Refinance Representation**);

Particulars

(i). *The representation was partly express and partly implied.*

(ii). *To the extent that it was express it was in writing and conveyed by the Financing Risks Statement.*

(iii). *To the extent it was implied it may be discerned from:*

A. the text of the disclosure and, in particular, by reference to the use of the word "planned" (which connotes voluntariness) in that context; and

B. *the fact that the respondent had represented (by reason of the matters pleaded and particularised in subparagraphs 29A(b) and 30(c)(i) above) that it had current liabilities of approximately $303.4 million with the result that any remaining amounts owing in relation to the US Debt Facilities were non-current liabilities which did not require repayment in the ensuing 12 months.*

31. Between 3 March 2008 and 6 May 2008 the respondent represented in writing to Grant Samuel, the independent expert engaged to assess whether the proposed merger was in the interests of Zinifex shareholders, that to its knowledge the information provided by it to Grant Samuel was complete and not incorrect or misleading in any material respect (**Grant Samuel Representation**).

Particulars

The Grant Samuel Representation was in writing.

32. Further and in the alternative, at all times during the Relevant Period, the respondent represented to the applicant and group members that:

(a) it had disclosed to the public, as it immediately became aware of them within the meaning of the ASX Listing Rules, all material matters regarding its profitability which members of the public should take into account in deciding to acquire an interest in its shares (**Implied Continuous Disclosure Representation**);

(b) it had undertaken all necessary and reasonable investigations before making representations as to the state of its business and accounts and had satisfied itself on reasonable grounds following those investigations that its public statement were substantially accurate and not misleading or deceptive in any respect (**Reasonable Enquiry Representation**).

Particulars

Each of the Implied Continuous Disclosure Representation and the Reasonable Enquiry Representations were implied in circumstances in which:

(i). *the respondent made announcements to the market via the ASX company announcements platform during the Relevant Period which were not subject to qualifications or caveats as to its compliance with its Continuous Disclosure Obligations, its familiarity with the state of its business and accounts, or its ability to make reasonable enquiries as to such matters;*

(ii). *it was at all relevant times under a statutory duty to comply with the Continuous Disclosure Requirements; and*

(iii). *in such circumstances, a reasonable participant in the market for the respondent's securities would expect that the respondent had complied with its Continuous Disclosure Requirements.*

D. THE TRUE POSITION DURING THE RELEVANT PERIOD

I. Australian Accounting Standards

33. At all material times during the Relevant Period:

(a) paragraph 60 of AASB 101 of the Australian Accounting Standards (**Australian Accounting Standards**) provided that a liability shall be classified as 'current' when it satisfies any of the following criteria:

(i). it is expected to be settled in the entity's normal operating cycle;

(ii). it is held primarily for the purpose of being traded;

(iii). it is due to be settled within 12 months after the end of the reporting date; or

(iv). the entity does not have an unconditional right to defer settlement of the liability for at least 12 months after the reporting date.

(b) the respondent's accounting policies further required borrowings to be classified as current liabilities unless the respondent had an unconditional right to defer settlement of the liability for at least 12 months after the balance sheet date.

II. The respondent - known risk factors

34. As at 28 February 2008 and at all times during the Relevant Period:

(a) the respondent's revenue and cash flow were affected by changes in commodity prices;

(b) the respondent's ability to service and repay its US Debt Facilities (which were repayable in US dollars) were affected by changes in the value of the Australian dollar ;

(c) there had been, since August 2007, turbulence in international credit markets, such that it had become more difficult and more expensive to access finance through the commercial bank lending market traditionally used by Australian companies, including the respondent, than it had been prior to August 2007;

(d) there was a material risk that the credit markets would tighten further throughout 2008 such that:

(i). it would become substantially more difficult and more expensive to access finance through the commercial bank lending market traditionally used by Australian companies including the respondent, than it had been prior to the onset of the Global Financial Crisis;

(ii). the supply of credit would diminish, particularly for entities perceived to be high risk; and

(iii). refinancing of the US Debt Facilities would become more difficult or impossible to obtain on favourable terms, or at all;

(e) the respondent (whether or not the proposed merger proceeded) had in contemplation or was committed to a number of significant mining development projects which would require significant capital outlay in the fourth quarter of FY2008 and the first half of FY2009;

Particulars

(i). *Expansion of the Sepon copper mine in Indonesia at an estimated capital cost of US $310 million.*

(ii). *Development of a new mine in Martabe Indonesia at an estimated capital cost of $310 million.*

(iii). *Construction of the respondent's new mine at Prominent Hill at an estimated capital cost of A$1,080 million. The new Prominent Hill mine was approximately 50% complete as at 31 December 2007 and was expected to be completed by mid 2008.*

(iv). *During the final quarter of FY2008 the respondent would be simultaneously developing the Sepon, Martabe and Prominent Hill mines.*

(v). *Oxiana's plans to progress each of the above projects in FY 2008 was referred to (inter alia) in the Oxiana Review 2007 at page 6 (Table entitled "Oxiana – development pipeline") (**Oxiana Review**) and in the 2007 Financial Report at pages 3 to 4.*

(f) in the absence of the proposed merger with Zinifex:

(i). the respondent had insufficient cash on hand to fund its expected capital outlays in the fourth quarter of FY2008 and the first half of FY2009;

Particulars

A. As at 31 December 2007, the respondent had AUD$246 million cash.

B. The respondent's capital expenditure CY 2008 was likely to exceed $1 billion based on the costs incurred as at 31 December 2007 in relation to the Prominent Hill, Sepon and Martabe projects, the projected costs to complete those projects, and the respondent's ongoing capital expenditure expenses.

(ii). the respondent would not, or would be unlikely to have sufficient cash, available credit or operational cash flow to complete its planned capital works without resort to further borrowings;

Particulars

A. The applicant repeats the matters pleaded and particularised in subparagraphs 34(a), 34(b), 34(e) and 34(f)(i) above.

B. By 31 March 2008:

1. *the respondent had drawn down AUD$394 million from the US Debt Facilities in order to finance the development of the Prominent Hill mine;*

2. *the US Debt Facilities were fully drawn or near fully drawn (in the amount of approximately USD $640 or approximately AUD$710 million at the then prevailing exchange rate out of total available facilities of approximately AUD$724 million);*

3. *the respondent's capital expenditure was likely to exceed A$1 billion;*

4. *broker forecasts of the respondents net profit after tax for FY 2008 were in the range of circa $200m to $350m such that the respondent*

would not have sufficient cash on hand or available cash flow to fund its planned capital expenditure without resort to further borrowings.

(g) Zinifex had in contemplation additional significant mining development projects and acquisitions which would require further capital outlay in the fourth quarter of FY2008 and the first half of FY2009 (in addition to that to which the respondent had committed to);

Particulars

(i). *Development of the Century Mine waste stripping facilities.*

(ii). *Surface facility renewal at the Rosebery mine at an estimated cost of $125 million.*

(iii). *Planned completion of its takeover of Allegiance Mining NL at an expected cost of $878.3 million.*

(iv). *Other Zinifex exploration projects.*

(h) if the proposed merger was to proceed there was a material risk that the respondent would have insufficient cash, available credit or operational cash flow to complete its planned capital works (including those planned by Zinifex prior to the merger) without resort to further borrowings:

Particulars

The applicant repeats the matters pleaded and particularised in subparagraphs 34(a), 34(b), 34(c), 34(d), 34(e) and 34(g) above.

III. The respondent - undisclosed risks factors

~~*Material Information – the respondent*~~

35. At all material times during the Relevant Period, as a result of the respondent's entry into the amended and restated LNSA, the Mezzanine Facility, and the Refinancing Agreement, in the event that the proposed merger did not proceed:

(a) there was a material risk that the respondent would not be in a position to obtain the finance necessary to refinance the US Debt Facilities by the 8 August Refinancing Deadline and/or repay the amounts drawn pursuant to the Mezzanine Facility by the November 2008 Deadline (**Oxiana Refinancing Risk**);

Particulars

(i). *The applicant refers to:*

A. the Current Liability Position and the Cross Default Risk pleaded at paragraphs 18 to 20 above; and

B. the known risk factors relating to the respondent pleaded and particularised at paragraphs 34(a) to 34(f) above (inclusive).

(ii). *As a result of the matters pleaded in subparagraphs 34(a), 34(b), 34(e) and 34(f) above, there was a material risk that the respondent's credit worthiness would deteriorate prior to the 8 August Refinancing Deadline.*

(iii). *As at 28 February 2008, the respondent was unable or unwilling to obtain USD $140 million mezzanine financing from a syndicate of lenders without changing*

the nature of its existing senior debt facilities (of approximately USD $500 million plus A$25 million) from non - current liabilities to current liabilities.

(iv). *The ultimate' approval of refinancing depended upon the position, circumstances and discretion of a syndicate of lenders.*

(b) there was a material risk that a number of mining development and exploration projects that the respondent was planning or was committed to would be delayed or not proceed which would significantly reduce future cash flows (**Oxiana Development Delay Risk**);

Particulars

The applicant repeats the matters pleaded and particularised in subparagraphs 34(a) to 34(f) (inclusive) and 35(a) above.

(c) to the extent that there was a lack of correspondence between the maturity of the outstanding debt facilities with the expected dates for completion of the development projects there was a material risk that:

(i). the respondent's development projects were not fully funded and in the event that the facilities could not be extended, renewed or refinanced on or before 8 August 2008 and/or in the event that amounts payable under the Mezzanine Facility were not repaid by 30 November 2008, the respondent would be deprived of the means to finance its development projects; and, in the absence of cash on hand, would become insolvent (**Oxiana Insolvency Risk**):

(ii). the respondent would be forced to raise cash through the sale of assets at distressed vendor prices (**Oxiana Asset Sale Risk**);

Particulars

The applicant repeats the matters pleaded and particularised in subparagraphs 34(a) to 34(f) (inclusive) and paragraphs 35(a) and 35(b) above.

~~*Material information – the proposed merger*~~

36. Further and in the alternative to the matters pleaded and particularised in paragraphs 34 and 35:

(a) on 2 March 2008, the respondent and Zinifex had agreed on the terms of a proposed merger to be implemented by a scheme of arrangement whereby Zinifex shareholders were to receive 3.1931 shares in the respondent for each Zinifex share they held;

Particulars

*The terms of the proposed merger were written in a merger implementation agreement (**MIA**) entered into by the respondent and Zinifex on 2 March 2008 which was amended on 29 April 2008.*

(b) at all material times during the Relevant Period on and after 2 March 2008;

(i). the scheme consideration had been determined having regard to the relative market value of the two companies and purportedly by reference to their respective true values;

Particulars

3 March Announcement, page 2 (penultimate paragraph).

(ii). the scheme consideration was calculated based on the respondent's pro-forma financial information as disclosed in the 2007 Financial Report (which

did not disclose the 8 August Refinancing Deadline, the Cross Default Risk or the Oxiana Refinancing Risk);

(iii). in the premises, the Scheme Consideration did not fairly reflect the respective market or true values of the respondent with the result that it did not reflect fair consideration to Zinifex shareholders (**Fair Consideration Information**).

37. Further and in the alternative, as a result of the respondent's entry into the amended and restated LNSA, the Mezzanine Facility, and the Refinancing Agreement, at all times during the Relevant Period, in the event that the proposed merger did proceed:

(a) there was a material risk that the respondent would not be in a position to obtain the finance necessary to refinance the US Debt Facilities by the 8 August Refinancing Deadline and/or the November 2008 Deadline (**Merger Refinancing Risk**);

Particulars

(i). *The applicant refers to:*

A. the Current Liability Position and the Cross Default Risk pleaded at paragraphs 18 to 20 above; and

B. the known risk factors relating to the respondent pleaded and particularised at paragraphs 34(a) to 34(f) above (inclusive);

C. the known and undisclosed risk factors relating to the prospective merged entity pleaded and particularised in subparagraph 34(g) and 34(h) above.

(ii). *As a result of the matters repeated in the previous particular, there was a material risk that the respondent's credit worthiness would deteriorate prior to the 8 August Refinancing Deadline at the same time as the supply of credit on global markets became more restricted.*

(b) there was ~~in~~ an increased and material risk that a number of mining development and exploration projects that the respondent and Zinifex were planning or were committed to would ~~likely~~ be delayed or not proceed which would significantly reduce future cash flows (**Merger Development Delay Risk**);

Particulars

The applicant refers to and repeats the matters pleaded and particularised in subparagraph 37(a) above.

(c) there was an increased and material risk that a large proportion or all of Zinifex's cash holdings would be required to be drawn on by the respondent in order to progress its foreshadowed development and exploration projects and conduct its operations than would have been the case had the respondent not entered into the amended and restated LNSA, the Mezzanine Facility, and the Refinancing Agreement, and amounts drawn under its US Debt Facilities had not become current liabilities (**First Zinifex Cash Risk**);

Particulars

The applicant refers to and repeats the matters pleaded and particularised in subparagraphs 37(a) and 37(b) above.

(d) there was a material risk that a significant portion or all of Zinifex's cash holdings would be called upon to repay the US Debt Facilities in the event that they became due and payable on ~~at~~ the 8 August Refinancing Deadline and/or the November 2008 Deadline (**Second Zinifex Cash Risk**);

Particulars

The applicant refers to and repeats the matters pleaded and particularised in subparagraphs 37(a), 37(b) and 37(c) above.

(e) there was a material risk that the respondent would be forced to raise cash through the sale of assets at distressed vendor prices (**Merger Asset Sale Risk**).

Particulars

The applicant refers to and repeats the matters pleaded and particularised in subparagraphs 37(a), 37(b), 37(c) and 37(d) above.

IV. November 2008 Disclosures

38. In or about early August 2008, the 8 August~~First~~ Refinancing Deadline was extended to 30 November 2008 (i.e. the November 2008 Deadline).

38A. On 21 November 2008, after the close of trading on the ASX, equities analysts at Bell Potter (UBS) revealed to the market for the first time (inter alia) that the respondent was required to refinance US$600 million in "December 2008".

38B. Following the release of the Bell Potter report, the respondent's share price:

(a) fell from a closing price of $0.60 per share on 21 November 2008 to $0.54 per share at 10:40 am on 24 November 2008 (the following trading day);

~~(a)~~(b) fell to a closing price of $0.52 per share on 24 November 2008.

39. On 25 November 2008 (**Disclosure Date**), the respondent (which had by this time merged with Zinifex and was known as ~~Oz~~ OZ Minerals) published and lodged with the ASX a document entitled "ASX Release – ~~Oz~~ OZ Minerals to defer projects and cut operating costs" (**25 November Announcement**).

40. The 25 November Announcement contained express statements to the following effect:

(a) that the respondent was in negotiations to refinance its debt facilities;

(b) that the negotiations were not yet complete and the respondent was required to seek an extension of certain of its current facilities as envisaged in the facility documentation to enable the negotiations to be completed in a timely manner;

(c) that the "current facilities" for which extensions were required comprised one facility of US$420 million and one of US$140 million;

(d) the respondent would defer several capital projects worth $495 million (net) and make substantial cuts to operating cost budgets worth $185 million;

(e) the respondent would cut annual production of zinc from the Century mine by 20,0000 tonnes per annum;

(f) the decisions announced by the 25 November Announcement would enable the respondent to eliminate or defer substantial cash outflows at a time when access to capital was more difficult ~~at~~ than at any time in the previous decade and ~~the~~ when the respondent was in the middle of re-financing its debt facilities.

40A. OZ Minerals had not, prior to making the 25 November Announcement, publicly disclosed the information conveyed by that announcement as pleaded in paragraph 40 above.

40B. On 28 November 2008, OZ Minerals published and lodged with the ASX a document entitled "Request for Trading Halt". In that document the respondent referred to its previous (25 November 2008) announcement and stated (inter alia) that:

(a) the smaller (US$140 million) [Mezzanine] facility was due for repayment on 30 November 2008;

(b) the lenders under that facility had agreed to extend the repayment date to 31 January 2009;

(c) the US$420 million [LNSA] facility was due for repayment in periodic instalments, with the first instalment due on 31 December 2008; and

(d) under a separate arrangement, the respondent had undertaken to refinance both facilities by 30 November 2008.

40C. Prior to the 28 November 2008 announcement, the respondent had not previously disclosed to the market (and the market had not otherwise been made aware) that:

(a) the Mezzanine Facility was due for repayment on 30 November 2008; and/or

(b) the date by which the respondent was to refinance its US Debt Facility debts was 30 November 2008.

40D On 28 November 2008, the ASX placed the respondent's shares in trading halt pending the earlier of the release of a further announcement by the respondent or the commencement of trading on 2 December 2008.

40D. On 2 December 2008, the respondent's shares were suspended from trading until 17 February 2009.

40E. As a result of the 28 November 2008 announcement (and during the trading halt), the value of Oxiana declined further as a result of the release of the information referred to in paragraphs 40B and 40C above.

E. BREACH OF CONTINUOUS DISCLOSURE OBLIGATIONS

I. The 8 August Refinancing Deadline

41. The 8 August Refinancing Deadline (pleaded at [13] above) was at all times during the Relevant Period information concerning the respondent that was:

(a) not generally available within the meaning of section 676 of the Corporations Act; and

(b) which a reasonable person would expect, if it was generally available, to have a material effect on the price or value of the respondent's securities within the meaning of ASX listing Rule 3.1 and section 677 of the Corporations Act.

Particulars of 41(b)

(i). The applicant refers to the report of Michael D. Youngblood Ph.D dated 29 October 2015, particularly at paragraphs 210 to 213.

(ii). Further, as at 28 February 2008:

A. the respondent had planned capital expenditure of $US806 million with a net funding requirement of US$565 million for the 2008 calendar year;

~~A.~~B. the respondent had planned or was committed to drawing down the remaining credit available under the US Debt Facilities in order (predominantly or exclusively) to fund construction of the "Prominent Hill" mine by 31 March 2008 or, alternatively, by 30 June 2008.

(iii). As to the state of the respondent's drawings by no later than 31 March 2008, the applicant repeats the matters pleaded in paragraph 19 above.

(iv). Further, the 8 August Refinancing Deadline was material by reason of the Cross Default Risk, the Current Liability Position, the Oxiana Risks and the Merger Risks (alone and in combination).

42. By 28 February 2008, or by no later than 3 March 2008, and at all remaining times during the Relevant Period, the respondent was 'aware' within the meaning of ASX Listing Rule 19.12 of the 8 August Refinancing Deadline.

Particulars

(a) *The respondent's proposed entry into the Refinancing Agreement was tabled at a meeting of the board of the respondent on 19 February 2008.*

(b) *The minutes tabled on that date recorded that "The Mezzanine Facility expires in Q4 2008 and together with the initial $500M needs to be refinanced by 8 August 2008. By agreement with the lenders this date may be extended to 30 November 2008".*

(c) *Further, irrespective of actual knowledge:*

(i). compliance with the respondent's Continuous Disclosure Obligations required the board of the respondent to maintain a reasonable level of familiarity with the state of its business (including its accounts, the Australian Accounting Standards and the state of its current and non-current liabilities) and to make reasonable enquiries into such matters prior to making any public announcement;

(ii). the respondent published the 3 March Announcement, Q3 Report and prepared the Oxiana Information during the Relevant Period, each of which were public announcements concerning the current financial state of its business;

(iii). accordingly, each of the respondent's directors, if they did not know of the 8 August Refinancing Deadline, ought reasonably to have come into possession of that information in the course of the performance of their duties as a director or executive officer of that entity.

43. In the premises, from 28 February 2008 or by no later than 3 March 2008 and throughout the Relevant Period, the respondent was obliged pursuant to ASX Listing Rule 3.1 immediately to inform the ASX immediately of the 8 August Refinancing Deadline.

44. In contravention of ASX Listing Rule 3.1, and s 674(2) of the Corporations Act the respondent did not inform the ASX of the 8 August Refinancing Deadline immediately as it became aware of it.

II. The Current Liability Position

45. The Current Liability Position (pleaded at [19] above), by no later than 31 March 2008 or, alternatively, by 16 April 2008, and at all remaining times during the Relevant Period was information concerning the respondent that ~~was~~:

(a) was not generally available within the meaning of section 676 of the Corporations Act; and

(b) ~~which~~ a reasonable person would expect, if it was generally available, to have a material effect on the price or value of the respondent's securities within the meaning of ASX listing Rule 3.1 and section 677 of the Corporations Act.

Particulars of 45(b)

(i). *The applicant repeats particulars (i) to (iii) subjoined to paragraph 41(b) above.*

(ii). *Further, the Current Liability Position was material by reason of the Cross Default Risk, the Oxiana Risks and the Merger Risks (alone and in combination).*

46. By no later than 31 March 2008, or alternatively by 16 April 2008 and at all remaining times during the Relevant Period, the respondent was 'aware' within the meaning of ASX Listing Rule 19.12 of the Current Liability Position.

Particulars

(a) The applicant repeats the particulars to paragraph 42 above.

(b) The 2007 Financial Report noted that, as at 31 December 2007, the respondent had drawn down approximately $316 million on the LNSA.

(c) On 16 April 2008, the respondent published the Q3 Report which stated that, during the quarter ending 31 March 2008, the respondent had drawn a further $220 million on its

US$525million debt facility and fully drawn a further USD$140 million on a 'newly established debt facility", being the Mezzanine Facility.

(d) Further, irrespective of actual knowledge:

(i). *compliance with the respondent's Continuous Disclosure Obligations required the board of respondent to maintain a reasonable level of familiarity with the state of its business (including its accounts, the Australian Accounting Standards and the state of its current and non-current liabilities) and to make reasonable enquiries into such matters prior to making any public announcement;*

(ii). *further, compliance with the Continuous Disclosure Requirements and section 286 of the Corporations Act required the respondent to keep up to date records of account;*

(iii). *accordingly, each of the respondent's directors and executive officers, if they did not know of the Current Liability Position, ought reasonably to have come into possession of that information in the course of the performance of their duties as a director or executive officer of that entity by 31 March 2008 or, alternatively by 16 April 2008.*

47. In the premises on or from 31 March 2008, or alternatively by 16 April 2008 and continuing until 1 July 2008, the respondent was obliged pursuant to ASX Listing Rule 3.1 immediately to inform the ASX immediately of the Current Liability Position.

48. In contravention of ASX Listing Rule 3.1, and s 674(2) of the Corporations Act the respondent did not inform the ASX of the Current Liability Position immediately as it became aware of it.

III. The Cross Default Risk

49. The Cross Default Risk (pleaded at [20] above) was at all times during the Relevant Period information concerning the respondent that was:

(a) not generally available within the meaning of section 676 of the Corporations Act; and

(b) which a reasonable person would expect, if it was generally available, to have a material effect on the price or value of the respondent's securities within the meaning of ASX listing Rule 3.1 and section 677 of the Corporations Act.

Particulars

(i). *The applicant repeats particulars (i) to (iii) subjoined to paragraph 41(b) above.*

(ii). *Further, the Cross Default Risk was material by reason of the Current Liability Position, the Oxiana Risks and the Merger Risks (alone and in combination).*

50. By 28 February 2008, or by no later than 3 March 2008 and at all remaining times during the Relevant Period, the respondent was 'aware' within the meaning of ASX Listing Rule 19.12 of the Cross Default Risk.

Particulars

(a) The applicant repeats the particulars to paragraph 42 above.

(b) Further, irrespective of actual knowledge:

(i) compliance with the respondent's Continuous Disclosure Obligations required the board of respondent to maintain a reasonable level of familiarity with the state of its business (including its accounts, the Australian Accounting Standards and the state of its current and non-current liabilities) and to make reasonable enquiries into such matters prior to making any public announcement;

(ii) *the respondent published the 3 March Announcement, Q3 Report and prepared the Oxiana Information during the Relevant Period, each of which were public announcements concerning the current financial state of its business;*

(iii) *accordingly, each of the respondent's directors, if they did not know of the Cross Default Risk, ought reasonably to have come into possession of that information in the course of the performance of their duties as a director or executive officer of that entity, at least by the time of publication of the 3 March Announcement, if not earlier.*

51. In the premises on or from 28 February 2008, or in the alternative by 3 March 2008 or 16 April 2008 and continuing until 1 July 2008, the respondent was obliged pursuant to ASX Listing Rule 3.1 immediately to inform the ASX immediately of the Cross Default Risk.

52. In contravention of ASX Listing Rule 3.1, and s 674(2) of the Corporations Act the respondent did not inform the ASX of the Cross Default Risk immediately as it became aware of it.

F. MISLEADING OR DECEPTIVE CONDUCT

IV. The Oxiana Risks

53. [Intentionally blank]. ~~Each of the Oxiana Refinancing Risk (pleaded at [35(a)] above), the Oxiana Development Delay Risk (pleaded at [35(b)] above), the Oxiana Insolvency Risk (pleaded at [35(c)(i)] above) and the Oxiana Asset Sale Risk (pleaded at [35(c)(ii)] above) (together, the "Oxiana Risks") were individually and collectively at all times during the Relevant Period, information concerning the respondent that was:~~

~~(a) not generally available within the meaning of section 676 of the Corporations Act; and~~

~~(b) which a reasonable person would expect, if it was generally available, to have a material effect on the price or value of the respondent's securities within the meaning of ASX Listing Rule 3.1 and section 677 of the Corporations Act.~~

54. By 28 February 2008, or in the alternative by 3 March 2008, 31 March 2008 or 16 April 2008 and continuing until 1 July 2008, the respondent ~~was 'aware'~~knew or ought to have known of each of the Oxiana Refinancing Risk (pleaded at [35(a)] above), the Oxiana Development Delay Risk (pleaded at [35(b)] above), the Oxiana Insolvency Risk (pleaded at [35(c)(i)] above) and the Oxiana Asset Sale Risk (pleaded at [35(c)(ii)] above) (together, the "**Oxiana Risks**") ~~within the meaning of ASX Listing Rule 19.12 of each of the Oxiana Risks~~.

Particulars

(a) The applicant repeats the matters pleaded and particularised in 42, ~~and~~ 46 and 50 above (concerning the respondent's awareness of the 8 August Refinancing Deadline, ~~and~~ the Current Liability Position and the Cross Default Risk). Those risks, inter alia, ought to have informed the respondent of the Oxiana Risks.

(b) Further, compliance with Continuous Disclosure Requirements required the directors of the respondent to maintain a reasonable degree of familiarity with its business such that they ought to have been aware of the matters pleaded and particularised in subparagraphs 34(a) to 34(f) (inclusive) and 35(a) above, namely (as to the pleaded allegations) that:

(i) the respondent's revenue and cash flow depended upon stability in commodity prices;

(ii) the respondent's ability to service and repay its US Debt Facilities (which were repayable in US dollars) depended upon stability of the currency;

(iii) *there had been, since August 2007, turbulence in international credit markets, such that it had become more difficult and more expensive to access finance through the commercial bank lending market traditionally used by Australian companies including the respondent than it had been prior to August 2007;*

(iv) *there was a material risk that the credit markets would tighten further throughout 2008 such that:*

A. *it would become substantially more difficult and more expensive to access finance through the commercial bank lending market traditionally used by Australian companies including the respondent, than it had been prior to the onset of the Global Financial Crisis;*

B. *the supply of credit would diminish, particularly for entities perceived to be high risk; and*

C. *refinancing of the US Debt Facilities would become more difficult or impossible to obtain on favourable terms, or at all;*

(v) *the respondent (whether or not the proposed merger proceeded) had in contemplation or was committed to a number of significant mining development projects which would require significant capital outlay in the fourth quarter of FY2008 and the first half of FY2009;*

(vi) *in the absence of the proposed merger with Zinifex:*

A. *the respondent had insufficient cash on hand to fund its expected capital outlays in the fourth quarter of FY2008 and the first half of FY2009;*

B. *the respondent would not, or would be unlikely to have sufficient cash, available credit or operational cash flow to complete its planned capital works without resort to further borrowings; and*

C. *there was a material risk that the respondent would not be in a position to obtain the finance necessary to refinance the US Debt Facilities by the 8 August Refinancing Deadline.*

(c) *Particulars of actual knowledge of the respondent of the Oxiana Risks may be provided after discovery.*

55. [Intentionally blank]. ~~In the premises from 28 February 2008, or in the alternative by 3 March 2008, 31 March 2008 or 16 April 2008 and continuing until 1 July 2008, the respondent was obliged pursuant to ASX Listing Rule 3.1 immediately to inform the ASX immediately of each of the Oxiana Risks.~~

56. [Intentionally blank]. ~~In contravention of ASX Listing Rule 3.1, and s 674(2) of the Corporations Act the respondent did not inform the ASX of the Oxiana Refinancing Risk immediately as it became aware of it.~~

~~V~~II. The Fair Consideration Information

57. [Intentionally blank]. ~~The Fair Consideration Information (pleaded at [36(b)] above) was at all times during the Relevant Period information concerning the respondent that was:~~

~~(a) not generally available within the meaning of section 676 of the Corporations Act; and~~

~~(b) which a reasonable person would expect, if it was generally available, to have a material effect on the price or value of the respondent's securities within the meaning of ASX listing Rule 3.1 and section 677 of the Corporations Act.~~

58. By 3 March 2008 and continuing until 1 July 2008, the respondent ~~was 'aware' within the meaning of ASX Listing Rule 19.12~~knew or ought to have known of the Fair Consideration Information.

Particulars

(a) The fact that the Scheme Consideration had been determined having regard both to the relative market value of the two companies and their respective true values was referred to by the respondent at page 2 of the 3 March Announcement.

(b) As to the respondent's knowledge concerning the 8 August Refinancing Deadline, the Cross Default Risk and Oxiana Refinancing Risk, (which if disclosed prior to 2 March 2008 would have impacted the respondent's share price and/or underlying value) the applicant repeats the matters pleaded in paragraphs 42, 50 and 54 above.

59. [Intentionally blank]. ~~In the premises on or from 3 March 2008 and continuing until 1 July 2008, the respondent was obliged pursuant to ASX Listing Rule 3.1 immediately to inform the ASX immediately of the Fair Consideration Information.~~

60. [Intentionally blank]. ~~In contravention of ASX Listing Rule 3.1, and s 674(2) of the Corporations Act the respondent did not inform the ASX of the Fair Consideration Information immediately as it became aware of it.~~

~~V~~III. The Merger Risks

61. [Intentionally blank] ~~Each of the Merger Refinancing Risk (pleaded at [37(a)] above), the Merger Development Delay Risk (pleaded at [37(b)] above), the First Zinifex Cash Risk (pleaded at [37(c)] above), Second Zinifex Cash Risk (pleaded at [37(d)] above) and the Merger Asset Sale Risk (pleaded at [37(e)] above) (together the **Merger Risks**) were individually and collectively at all times during the Relevant Period, information concerning the respondent that was:~~

~~(a) not generally available within the meaning of section 676 of the Corporations Act; and~~

~~(b) which a reasonable person would expect, if it was generally available, to have a material effect on the price or value of the respondent's securities within the meaning of ASX listing Rule 3.1 and section 677 of the Corporations Act.~~

62. By 28 February 2008, or in the alternative by 3 March 2008, 31 March 2008 or 16 April 2008 and continuing until 1 July 2008, the respondent ~~was 'aware' within the meaning of ASX Listing Rule 19.12~~knew or ought to have known of each of the Merger Refinancing Risk (pleaded at [37(a)] above), the Merger Development Delay Risk (pleaded at [37(b)] above), the First Zinifex Cash Risk (pleaded at [37((c)] above), Second Zinifex Cash Risk (pleaded at [37(d)] above) and the Merger Asset Sale Risk (pleaded at [37(e)] above) (together the **Merger Risks**)~~Merger Risks~~.

Particulars

(a) The respondent's awareness of the 8 August Refinancing Deadline, the Current Liability Position and the Cross Default Risk (pleaded and particularised in 42, 46 and 50 above), inter alia, informed or ought to have informed it of each of the Merger Risks.

(b) Further, compliance with Continuous Disclosure Requirements required the directors of the respondent to maintain a reasonable degree of familiarity with its business such that they ought to have been aware of the matters pleaded and particularised in 34(a), 34(b), 34(c), 34(d), 34(e), 34(g), 34(h), 36 and 37(a) above, namely (as to the pleaded allegations) that:

(i). the respondent's revenue and cash flow depended upon stability in commodity prices;

(ii). the respondent's ability to service and repay its US Debt Facilities (which were repayable in US dollars) depended upon stability of the currency;

(iii). there had been, since August 2007, turbulence in international credit markets, such that it had become more difficult and more expensive to access finance through the commercial bank lending market traditionally used by Australian companies including the respondent than it had been prior to August 2007;

(iv). there was a material risk that the credit markets would tighten further throughout 2008 such that:

A. it would become substantially more difficult and more expensive to access finance through the commercial bank lending market traditionally used by Australian companies including the respondent, than it had been prior to the onset of the Global Financial Crisis;

B. the supply of credit would diminish, particularly for entities perceived to be high risk; and

C. refinancing of the US Debt Facilities would become more difficult or impossible to obtain on favourable terms, or at all;

(i). the respondent (whether or not the proposed merger proceeded) had in contemplation or was committed to a number of significant mining development projects which would require significant capital outlay in the fourth quarter of FY2008 and the first half of FY2009;

(ii). Zinifex had in contemplation additional significant mining development projects and acquisitions which would require further capital outlay in the fourth quarter of FY2008 and the first half of FY2009 (in addition to that to which the respondent had committed to);

(iii). if the proposed merger was to proceed:

A. there was a material risk that the respondent would have insufficient cash, available credit or operational cash flow to complete its planned capital works (including those planned by Zinifex prior to the merger) without resort to further borrowings:

B. there was a material risk that the respondent would not be in a position to obtain the finance necessary to refinance the US Debt Facilities by the 8 August Refinancing Deadline.

(i). Further particulars of actual knowledge of the respondent of the Merger Risks may be provided after discovery.

63. [Intentionally blank] ~~In the premises on or from 28 February 2008, or in the alternative by 3 March 2008, 31 March 2008 or 16 April 2008 and continuing until 1 July 2008, the respondent was obliged pursuant to ASX Listing Rule 3.1 immediately to inform the ASX immediately of the Merger Risks.~~

64. [Intentionally blank]. ~~In contravention of ASX Listing Rule 3.1, and s 674(2) of the Corporations Act the respondent did not inform the ASX of the Merger Risks immediately as it became aware of them.~~

~~F. MISLEADING OR DECEPTIVE CONDUCT~~

IV. The representations misleading

65. The:

(a) Fair Market Price Representation (pleaded at [22(a)] and [22(b]); and

(b) Relative Market Value Representation (pleaded at [22(c)]);

were, together and separately, misleading or deceptive or likely to mislead or deceive

Particulars

The Fair Market Price Representation and Relative Market Value Representation were each misleading or deceptive by reason of the fact that none of the following matters had been disclosed to the public prior to 2 March 2008 or taken into account in determining the proposed Scheme Consideration:

(i) the 8 August Refinancing Deadline and the Cross Default Risk pleaded at paragraphs 13 and 20 (inclusive) above;

(ii) the Oxiana Refinancing Risk as pleaded and particularised at paragraph 35(a) above;

(iii) the Oxiana Development Delay Risk as pleaded and particularised at paragraph 35(b) above;

(iv) the Oxiana Insolvency Risk as pleaded and particularised at paragraph 35(c)(i) above; or

(v) the Oxiana Asset Sale Risk as pleaded and particularised at paragraph 35(c)(ii) above.

66. The First Balance Sheet Representation (pleaded at [22(d)]) was a representation as to a future matter or future matters made without reasonable basis.

Particulars

The applicant repeats the matters pleaded and particularised in paragraphs 42, 50 and 62 above and says that the respondent did not have reasonable grounds for making the First Balance Sheet Representation because:

(i). at all times on and from 28 February 2008, or by no later than 3 March 2008 and throughout the Relevant Period, the applicant knew or ought to have known of each of:

A. *the 8 August Refinancing Deadline and the Cross Default Risk pleaded at paragraphs 13 and 20 above;*

B. *the Merger Refinancing Risk as pleaded and particularised at subparagraph 37(a) above;*

C. *the Merger Development Delay Risk as pleaded and particularised at subparagraph 37(b) above;*

D. *the First Zinifex Cash Risk as pleaded and particularised at subparagraph 37(c) above;*

E. *the Second Zinifex Cash Risk as pleaded and particularised at subparagraph 37(d) above;*

F. *the Merger Asset Sale Risk as pleaded and particularised at subparagraph 37(e) above;*

(ii). by reason of the respondent's actual or constructive knowledge of each of those risks (individually or in combination), the respondent knew or ought to have known that the combined group would not be very well equipped to succeed in any market environment and, accordingly, did not have reasonable grounds for the First Balance Sheet Representation;

(iii). The applicant repeats the matters pleaded in paragraph 40 above.

66A. The Implied First Balance Sheet Representation (pleaded at [22(e)]):

(a) in so far as it was a representation as to a present matter or present matters, was misleading or deceptive or likely to mislead or deceive;

Particulars

In so far as the representation conveyed that the board of the respondent had reasonable grounds for believing that the combined group would have a very strong balance sheet and would be very well equipped to succeed in any market environment it was misleading or deceptive for the reasons particularised in paragraph 66 above.

(b) in so far as it was a representation as to future matters, was made without reasonable basis.

Particulars

The applicant repeats the matters particularised in relation to paragraph 66 above.

67. [Intentionally blank.]

68. The:

(a) First 16 April Debt Representation (pleaded at [25(a)]);

(b) Second 16 April Debt Representation (pleaded at [25(b)]);

(c) Third 16 April Debt Representation (pleaded at [25(c)]); and

(d) AGM Representation (pleaded at [27]);

were, together and separately, misleading or deceptive or likely to mislead or deceive and, in so far as the First April Debt Representation, Third 16 April Debt Representation and the AGM Representation were or included representations as to future matters, they were, together or separately, made without reasonable basis.

Particulars

(i). *The First April Debt Representation, the Third 16 April Debt Representations and the AGM Representation were misleading or deceptive by reason of:*

A. *the 8 August Refinancing Deadline, the Current Liability Position and the Cross Default Risk pleaded at paragraphs 13, 19 and 20 above;*

B. *the Oxiana Refinancing Risk as pleaded and particularised at paragraph 35(a) above;*

C. *the Oxiana Development Delay Risk as pleaded and particularised at paragraph 35(b) above;*

D. *the Oxiana Insolvency Risk as pleaded and particularised at paragraph 35(c)(i) above; and/or*

E. *the Oxiana Asset Sale Risk as pleaded and particularised at paragraph 35(c)(ii) above.*

(ii). *In so far as the First April Debt Representation, the Third 16 April Debt Representations and the AGM Representation (or any of them) were or included representations as to future matters, they were (separately or together) made without reasonable basis by reason of the ~~respondent's 'awareness' (within the meaning of ASX Listing Rule 19.12)~~ actual or constructive knowledge of each of the risks referred to in the previous particular, and their likely or potential impact on the respondent's future cash flows and ability to service is debts, as pleaded and particularised in paragraphs 42, 46, 50 and 54 above.*

(iii). *The Second 16 April Debt Representation was misleading or deceptive by reason of the Current Liability Position pleaded at paragraph 19 above.*

68AA. In the alternative to the matters pleaded in paragraph 68 above (and its subparagraphs):

(a) as at 16 April 2008, and at all material times thereafter, the respondent did not have reasonable grounds for holding the opinion that *"it had good debt facilities and its debt position was well and truly under control"* such that, by making the Debt Under Control Opinion Representation (pleaded at subparagraph 25(a1) above), the

respondent engaged in conduct that was misleading or deceptive or likely to mislead or deceive;

(b) as at 16 April 2008, and at all material times thereafter, the respondent did not have reasonable grounds for holding the opinion that *"its debt position was very comfortable"* such that, by making the Comfortable Debt Position Opinion Representation (pleaded at subparagraph 25(c1) above), the respondent engaged in conduct that was misleading or deceptive or likely to mislead or deceive;

Particulars of 68AA(a) and 68AA(b)

The respondent did not have reasonable grounds for holding the opinions referred to in subparagraphs 68AA(a) and/or 68AA(b) having regard to:

(i). *the 8 August Refinancing Deadline (pleaded at paragraph 13), Current Liability Position (pleaded at paragraph 19) and, the Cross Default Risk (pleaded at paragraph 20) and its 'awareness' of those risks within the meaning of Rule 19.12 of the ASX Listing Rules as pleaded and particularised in paragraphs 42, 46, 50 above;*

~~(i).~~(ii). *, the Oxiana Refinancing Risk, the Oxiana Insolvency Risk (pleaded at [35(c)(i)] above) and the Oxiana Asset Sale Risk (pleaded at [35(c)(ii)] above) (alone or in combination) and its actual or constructive knowledge of those risks as pleaded and particularised in paragraph 54 above. ; and*

~~*(c) its 'awareness' of those risks within the meaning of Rule 19.12 of the ASX Listing Rules as pleaded and particularised in paragraphs 42, 46, 50 and 54 above.*~~

~~(d)~~(c) as at 17 April 2008, and at all material times thereafter, the respondent did not have reasonable grounds for holding the opinion that *"it was in a very sound financial position with very little debt and strong cash flows"* such that the AGM Debt Opinion Representation (pleaded at paragraph 27A above) was misleading or deceptive or likely to mislead or deceive.

Particulars

(i). *The respondent did not have reasonable grounds for holding the opinion that it was in a very sound financial position having regard to:*

A. the 8 August Refinancing Deadline (pleaded at paragraph 13) Current Liability Position (pleaded at paragraph 19), the Cross Default Risk (pleaded at paragraph 20) and its 'awareness' of those risks within the meaning of Rule 19.12 of the ASX Listing Rules as pleaded and particularised in paragraphs 42, 46, 50;

~~A.~~B. ~~,~~the Oxiana Refinancing Risk, the Oxiana Insolvency Risk (pleaded at [35(c)(i)] above) and the Oxiana Asset Sale Risk (pleaded at [35(c)(ii)] above) (alone or in combination) and its actual or constructive knowledge of those risks as pleaded and particularised in paragraph 54 above.;

~~its 'awareness' of those risks within the meaning of Rule 19.12 of the ASX Listing Rules as pleaded and particularised in paragraphs 42, 46, 50 and 54 above.~~

(ii). *The respondent did not have reasonable grounds for holding the opinion that it had very little debt and strong cash flows having regard to:*

A. the Current Liability Position and the matters pleaded and particularised in subparagraphs 34((f)(i), 34(f)(ii) above, namely that in the absence of the proposed merger with Zinifex:

1. *the respondent had insufficient cash on hand to fund its expected capital outlays in the fourth quarter of FY2008 and the first half of FY2009;*

2. *the respondent would not, or would be unlikely to have sufficient cash, available credit or operational cash flow to complete its planned capital works without resort to further borrowings;*

B. *the respondent's lack of available credit facilities as particularised in particulars A. and B. to subparagraph 34(f)(ii) above;*

C. *the fact that the respondent knew or ought to have been aware of such matters by reason of its "awareness" (within the meaning of Rule 19.12 of the ASX Listing Rules) or actual or constructive knowledge of each of the risks particularised in particular (i)A. above as pleaded and particularised in paragraphs 42, 46, 50 and 54 above.*

68A. Further, or in the alternative to the matters pleaded and particularised in paragraphs 68 and 68AA above:

(a). by its statements during the First 16 April Debt Position Exchange ([24(a)]) and the Second 16 April Debt Position Exchange ([24(b)]) (separately or together), the respondent engaged in conduct that was misleading or deceptive or likely to mislead or deceive.

Particulars

The respondent's statements during the First 16 April Debt Position Exchange and the Second 16 April Debt Position Exchange were untrue in the following respects:

(a). as pleaded in paragraph 19 and 34(f) above, the respondent did not have around $300 million dollars able to be drawn from its credit facilities, rather, its facilities were or were close to fully drawn; and

(b). as pleaded in paragraph 34(f) above, in the absence of the proposed merger with Zinifex, the respondent would not, or would be unlikely to have sufficient cash, available credit or operational cash flow to complete its planned capital works without resort to further borrowings.

(b). by making the AGM Statement (pleaded at [26A]) the respondent engaged in conduct that was misleading or deceptive or likely to mislead or deceive.

Particulars

The AGM Statement was untrue by reason of:

(i). the 8 August Refinancing Deadline, the Current Liability Position and the Cross Default Risk pleaded at paragraphs 13, 19 and 20 above;

(ii). the Oxiana Refinancing Risk as pleaded and particularised at paragraph 35(a) above;

(iii). the Oxiana Development Delay Risk as pleaded and particularised at paragraph 35(b) above;

(iv). the Oxiana Insolvency Risk as pleaded and particularised at paragraph 35(c)(i) above; and/or

(v). the Oxiana Asset Sale Risk as pleaded and particularised at paragraph 35(c)(ii) above.

69. The Continuous Disclosure Representation (pleaded at [30(a)]) was misleading or deceptive or likely to mislead or deceive.

Particulars

The Continuous Disclosure Representation was untrue because, by 9 May 2008 (the date on which the Scheme Booklet was published), in contravention of the Continuous Disclosure Requirements, none or some of the Material Information referred to in paragraphs ~~49 to 64~~ 41 to 48 above (collectively, the ***Material Price Sensitive Information****) had been disclosed to the public as required (for these reasons set out in those paragraphs) by ASX Listing Rule 3.1 and section 674 of the Corporations Act.*

70. The:

(a) No Material Change Representation (pleaded at [30(b)]);

(b) Current Liabilities Representation (pleaded at [30(d)]);

(c) Planned Refinance Representation (pleaded at [30(e)]);

were, together and separately, misleading or deceptive or likely to mislead or deceive.

Particulars

(i). *The No Material Change Representation, Current Liabilities Representation and Planned Refinance Representation were untrue by reason of the 8 August Refinancing Deadline, the Current Liability Position and the Cross Default Risk pleaded at paragraphs 13, 19 and 20 above;*

(ii). *Further, the responded did not have reasonable grounds for the No Material Change Representation because, for the reasons pleaded and particularised in paragraphs 42, 46 and 50 above, the respondent knew or ought to have known before the publication of the Scheme Booklet on 9 May 2008 of the 8 August Refinancing Deadline, the Current Liability Position and the Cross Default Risk had it taken adequate steps to comply with the Continuous Disclosure Requirements.*

(iii). *The applicant repeats the matters pleaded in paragraph 33 above.*

71. The Grant Samuel Representation (pleaded at [31]) was misleading or deceptive or likely to mislead or deceive.

Particulars

The Grant Samuel Representation was untrue because, by 6 May 2008 (the date on which Grant Samuel Completed its report), the respondent had not informed Grant Samuel of the 8 August Refinancing Deadline, the Current Liability Position or the Oxiana Refinancing Risk and had failed to disclose to the public the Material Price Sensitive Information such that Grant Samuel did not have access to public records or announcements containing that information.

72. The Implied Continuous Disclosure Representation (pleaded at [32(a)]) was misleading or deceptive or likely to mislead or deceive.

Particulars

The Implied Continuous Disclosure Representation was untrue because throughout the Relevant Period, in contravention of the Continuous Disclosure Requirements none or some of the Material Price Sensitive Information had been disclosed to the public as required (for these reasons set out in those paragraphs) by ASX Listing Rule 3.1 and section 674 of the Corporations Act.

73. The Reasonable Enquiry Representation (pleaded at 32(b)) was misleading or deceptive or likely to mislead or deceive.

Particulars

(a) The applicant repeats the matters pleaded and particularised in paragraph 72 above.

(b) Had the respondent undertaken all necessary and reasonable investigations it would not have committed the Continuous Disclosure Contraventions or engaged in the misleading or deceptive conduct described in paragraphs 65 to 72 above.

IV. Misleading or deceptive conduct

Representations

74. By reason of the matters pleaded and particularised in paragraph 65, 66, 66A, 68, 68AA, 69, 70, 71, 72 and 73 above, in making (individually and in combination) each of the representations described in paragraphs 22, 25, 27, 27A, 30, 31 and 32 above (collectively, "the **Representations**"), the respondent, engaged in conduct:

    (a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;

    (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or

    (c) in trade or commerce, within the meaning of section 9 of the FTA.

75. The Representations were continuing from the dates on which they were initially made throughout the Relevant Period.

76. In so far as any of the Representations were representations as to a future matter or future matters, the applicant relies on section 12BB(1) of the ASIC Act, section 796C of the Corporations Act and section 4(2) of the FTA (as then applicable).

77. By reason of the matters pleaded in paragraphs 74 to 76 above, by making each of the Representations, the respondent engaged in conduct in contravention of:

    (a) section 1041H(1) of the Corporations Act;

    (b) section 12DA(1) of the ASIC Act; and/or

    (c) section 9 of the FTA.

Statements

77A. Further or in the alternative to the matters pleaded and particularised in paragraphs 74 to 77 above, by reason of the matters pleaded and particularised in paragraphs 68A(a), 68A(b) and 70A above, in making (individually and in combination) each of the statements described in paragraphs 24(a), 24(b), 26A, 29A(a) and 29A(b) (collectively and individually, **Misleading Statements**), the respondent engaged in conduct:

(a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or

(c) in trade or commerce, within the meaning of section 9 of the FTA.

77B. The conduct referred to in the previous paragraph was continuing from the date on which each of the Misleading Statements were initially made and throughout the Relevant Period.

77C. By reason of the matters pleaded and particularised in paragraphs 77A and 77B above, by making each of the Misleading Statements, the respondent engaged in conduct in contravention of:

(a) section 1041H(1) of the Corporations Act;

(b) section 12DA(1) of the ASIC Act; and/or

(c) section 9 of the FTA.

V. False or misleading statements

77D. Further or in the alternative to the matters pleaded and particularised in paragraphs 74 to 77C above, in making (individually and in combination) the Representations and/or the

Misleading Statements, and in contravention of section 1041E of the Corporations Act, the respondent made statements and/or disseminated information that:

(a) was false in a material particular or was materially misleading;

(b) was likely to induce persons to apply for, dispose of, or acquire shares in the respondent, or to increase, maintain, or stabilise the price for trading in shares in the respondent on the ASX; and

(c) at the time that the Representations and/or the Misleading Statements were made, and by virtue of the respondent's entry into the amended and restated LNSA, the Mezzanine Facility, and the Refinancing Agreement on 28 February 2008, and by virtue of the resulting 8 August Refinancing Deadline, Cross Default Risk and the Current Liability Position—the respondent knew, or ought reasonably to have known, were false in a material particular or were materially misleading.

Particulars of 77D(c)

The applicant repeats the matters pleaded and particularised in paragraphs 42, 46, 50, 54, 58, 62, 66, 66A, 68, 68AA and 70 above.

G. CAUSATION LOSS AND DAMAGE

I. The MIA

78. From 2 March 2008, and throughout the Relevant Period, the MIA included terms or terms to the effect that:

(a) the proposed merger would be implemented by a Scheme of Arrangement (**Scheme**) between Zinifex and its shareholders;

(b) under the Scheme Zinifex shareholders would transfer their Zinifex shares to the respondent and receive 3.193 shares in the respondent for each Zinifex share they held (**Scheme Consideration**);

(c) the agreement was subject to regulatory, Court and Zinifex shareholder approvals;

Particulars

(i). *Court approval of Scheme was required pursuant to section 411(4)(b) of the Corporations Act.*

(ii). *Sections 411(2) and 412 of the Corporations Act require that ASIC be provided with a reasonable opportunity to consider relevant materials concerning an application to convene meetings of shareholders and for Court approval of an arrangement between a company and its shareholders and to make submissions in relation to such applications.*

(iii). *Section 411(4)(ii)) of the Corporations Act provides an arrangement between a corporation and its members must be approved by resolution passed by a majority in the number of members who participate in the vote and, where the body has share capital, by 75% of the votes cast on the resolution.*

(d) Oxiana represents and warrants to Zinifex that:

(i). *"the Oxiana Provided Information (i) will be provided in good faith and on the understanding that Zinifex and each of its Officers will rely on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme and (ii) will comply in all material respects with the requirements of the Corporations Act, the ASX Listing Rules, ASIC Regulatory Guide 60 and ASIC Regulatory Guide 142"*:

Particulars

MIA, Clause 7.1(d).

(ii). *"as at the date of the Scheme Booklet is despatched to Zinifex Shareholders, the Oxiana Provided Information will not be misleading or deceptive in any material respect (whether by omission or otherwise)"*;

Particulars

MIA, Clause 7.1(f).

(iii). *"it will, as a continuing obligation, provide to Zinifex all such further or new material information that arises after the Scheme Booklet has been despatched until the date of the Scheme Meeting which is necessary to ensure that the Oxiana Provided Information, in the form and context in which that information appears in the version of the Scheme Booklet sent to shareholders, is not misleading or deceptive in any material respect (whether by omission or otherwise)"*;

Particulars

MIA, Clause 7.1(g).

(iv). at the date of the MIA, *"Oxiana is not in breach of its continuous disclosure obligations under the ASX Listing Rules or ... withholding any information from public disclosure in reliance on ASX Listing Rule 3.1A."*

Particulars

MIA, clauses 7.1 (i).

(e) it was a condition precedent of the proposed merger that the representations and warranties made by each of the respondent and Zinifex in the MIA remained true and correct in all material respects as at the date of the MIA and as at 8.00am on the Second Court Date;

Particulars

MIA, clause 3.1 ~~(b)~~(h).

(f) the MIA would be terminable by Zinifex (without penalty other than in respect of any accrued rights or remedies) if:

(i). a majority of the directors of Zinifex made a public statement changing or withdrawing their recommendation to Zinifex shareholders to vote in favour of the Scheme as a result of the independent expert engaged by Zinifex providing a report opining that the Scheme was not in the best interests of Zinifex shareholders (provided that a majority of the Zinifex Board, after considering the matter in in good faith and after consulting in good faith with Oxiana in relation to its proposed change of recommendation, no longer considered the Scheme to be in the best interests of Zinifex shareholders);

Particulars

MIA, clauses 5.5(b), 9.2.

(ii). the Scheme was not approved by the Court or the Zinifex shareholders; or

(iii). if an order was made by the Court restraining the Scheme.

(g) "Oxiana Provided Information means:

(i). *all information regarding or relating to the Oxiana Group which is necessary to ensure that the Scheme Booklet complies with the requirements of section 411(3) of the Corporations Act and ASIC Regulatory Guide 60 and ASIC Regulatory Guide 142, including (but not limited to) and financial forecasts information or other information contributed by Oxiana to the Scheme Booklet concerning financial forecasts; and*

(ii). *all the information that would be required under section 631(1)(g) of the Corporations Act if the Scheme Booklet were a bidder's statement offering the New Oxiana Shares as consideration under a takeover bid, to the extent reasonably practicable, but for the avoidance of doubt does not include the combined information";*

(h) *"Combined Information means the information in the Scheme Booklet regarding the combined Oxiana/Zinifex group after the merger and risk factors associated with the merger of Oxiana and Zinifex".*

Particulars (78(g)-(h))

MIA, clause 1.1.

79. The Scheme Consideration payable to Zinifex shareholders pursuant to the MIA was determined having regard to the volume-weighted average prices of both companies over the period during which the respondent and Zinifex were actively considering the proposed merger and (purportedly) the future prospects of each company.

Particulars

(a) 3 March Announcement, page 2.

(b) The applicant repeats the matters pleaded and particularised in relation to paragraphs 21A(a), 22 and 65 above.

II. The Scheme

80. The material provisions of the Scheme were that:

(a) the Scheme would come into effect on the "Effective Date" being the date on which orders of the Court made under section 411(4)(b) of the Corporations Act approving the Scheme became effective (**Effective Date**);

Particulars

Scheme, clause 3(a).

(b) the Scheme Consideration would be payable to all Eligible Scheme Shareholders (**Eligible Scheme Shareholders**), being each person registered in the Zinifex share register as the holder of Zinifex shares as at 7.00 pm on 4 business days after the Effective Date (**Scheme Record Date**), other than Ineligible Foreign Shareholders (**Ineligible Foreign Shareholders**);

Particulars

Scheme, clauses 5.1, 5.2.

(c) Ineligible Foreign Shareholders were those persons who were registered in the Zinifex share register as the holder of Zinifex shares as at the Scheme Record Date, whose address as shown in the Zinifex Share Register at the Scheme Record Date was a place outside Australia and its external territories, New Zealand, the United Kingdom or the United States of America, unless the respondent and Zinifex were satisfied, acting reasonably, that the laws of that person's country of residence (as shown on the Zinifex share register) permitted the issue and allotment of the respondent's shares to that person, either unconditionally, or after compliance with conditions which the respondent and Zinifex agreed were acceptable;

Particulars

Scheme, clause 5.6.

(d) if the Scheme was terminated according to the terms of the MIA on or before 8.00am on the first day set down for the hearing of the application for Court approval of the Scheme (**Second Court Date**), the respondent and Zinifex would be released from their obligations under the MIA and the Scheme would not be implemented;

Particulars

Scheme, clauses 2.1(b), 2.4.

(e) the Scheme was conditional upon the MIA not having been terminated as at 8.00am on the Second Court Date, and the Court approving the Scheme under section 411(4)(b) of the Corporations Act with or without modification;

Particulars

Scheme, clause 2.1(c).

(f) three business days after the Scheme Record Date, or on such other date as the respondent and Zinifex agreed in writing (**Implementation Date**);

(i). the Scheme Consideration would be transferred to Eligible Scheme Shareholders and their Zinifex shares would be transferred to the respondent based on the number of Zinifex shares held by that person on the Scheme Record Date;

Particulars

Scheme, clauses 1.1 (Implementation Date), 4.2, 5.1.

(ii). as to Ineligible Scheme Shareholders:

A. the Scheme Consideration owing to those persons would be transferred to a Nominee;

B. the respondent would procure the Nominee as soon as reasonably practicable after that date (and in any case within 15 business days) to sell on the ASX market all of the shares in the respondent issued to it under the Scheme at such price, and on such other terms as it determined in good faith (and at the risk of the Ineligible Foreign Shareholders);

C. the Ineligible Foreign Shareholders' proportionate share of the proceeds of sale of those shares would be paid to them (net of brokerage, stamp duty and other costs, taxes and charges) in full satisfaction of their claim under the Scheme to the Scheme Consideration;

Particulars

Scheme, clause 5.6.

(iii). as from the Scheme Record Date, Zinifex share certificates and holding statements would have no effect as documents of title (other than for the respondent after the Implementation Date) and, on the condition that the Scheme became effective, Zinifex shareholders (or any persons claiming through them under the Scheme) would not be permitted to dispose of or purport or agree to dispose of any Zinifex shares or any interest in them.

Particulars

Scheme, clauses 6.4, 6.5.

III. Court and shareholder approval of the Scheme

81. On 16 June 2008, the Zinifex shareholders voted in favour of the Scheme.

Particulars

In accordance with section 411(4)(ii)) of the Corporations Act, a resolution in favour of the merger was passed with the support of 75% of the votes cast.

82. On 20 June 2008, the Supreme Court of Victoria heard and favourably determined an application for approved the Scheme, Zinifex lodged the Court order with ASIC (as required by section 411(10) of the ASIC Act) and the Scheme became effective such that, under the terms of the Scheme:

(a) 20 June 2008 became the Effective Date and the Second Court Date;

(b) 26 June 2008 became the Scheme Record Date; and

(c) 1 July 2008 became the Implementation Date.

IV. Causation

83. At all material times during the Relevant Period:

(a) the directors of Zinifex were under a duty to exercise their powers and discharge their duties with reasonable care and diligence;

Particulars

The duty was owed pursuant to section 180(1) of the Corporations Act, at law and in equity.

(b) the directors of Zinifex were under a duty to exercise their powers and discharge their duties in good faith and in the best interests of the corporation and its shareholders;

Particulars

The duty was owed pursuant to section 182(1) of the Corporations Act and by reason of the directors' fiduciary relationship with Zinifex and its shareholders.

(c) the directors of Zinifex were under a duty to correct any statements made by Zinifex or on Zinifex's behalf to the ASX, known to them to be misleading or deceptive (including by correcting omissions and advising of new circumstances, without which Zinifex's shareholders would likely be induced into error).

Particulars

The duty arises from at least the following sources: (i) the statutory prohibitions in sections 1041E and 1041H of the Corporations Act, section 12DA of the ASIC Act, and section 9 of the FTA; (ii) Zinifex's continuous disclosure obligations under section 674 of the Corporations Act; and (iii) for the purposes of the Scheme Booklet—from Zinifex's information disclosure obligations in sections 412 and 719 of the Corporations Act.

84. At all material times during the Relevant Period, the respondent's securities were traded in a market (being a market comprised by the class of people and entities who were investors and potential investors in the respondent's securities) (**Oxiana Securities Market**):

(a) regulated by, inter alia, the ASX Listing Rules (particularly listing Rule 3.1), the Corporations Act (particularly section 674 and section 1041H) and the ASIC Act (particularly section 12DA);

(b) which was a "semi-strong" form of efficient market in which publically available information relevant to the price or value of the respondent's securities was

reflected in its share price shortly after ~~it~~ such information was made available to participants in the market such that the price of the respondent's securities would have been affected by such relevant information disclosed pursuant to:

(i) the respondent's continuous disclosure obligations under ASX ~~l~~Listing Rule 3.1, and section 674 of the Corporations Act; and

(ii) the norms of conduct prescribed in section 1041H of the Corporations Act and/or section 1041E of the Corporations Act and/or section 12DA of the ASIC Act.

85. By reason of the matters pleaded in paragraph 84 above, at all material times during the Relevant Period, each of:

(a) the respondent's breaches of the Continuous Disclosure Requirements (individually or in combination) as pleaded and particularised in paragraphs 13 to 20 (inclusive)~~, 33 to 37 (inclusive)~~ and 41 to 48 ~~64~~ (inclusive) above (**Continuous Disclosure Contraventions**); and/or

(b) the respondent's misleading or deceptive conduct contraventions (individually or in combination) as pleaded in paragraphs 21 to 37 (inclusive) and ~~65~~ 50 to 77C (inclusive) above and further or in the alternative the respondent's false or misleading statements (individually or in combination) as pleaded in paragraph 77D above (together, "**OZL Misleading Conduct Contraventions**");

(together and severally the **Contraventions**) was a cause of the prices at which the respondent's securities traded on the ASX being higher than:

(i) their true value; and/or

(ii) the market price(s) at which the securities would have traded if the Contraventions had not occurred.

Particulars

A. *The applicant repeats the matters pleaded in paragraphs 38A, 38B, 40B, 40C, 40D, 40E, 40F, 41, and 45, 49, 53, 57 and 61 above.*

B. *Further and alternatively, by conveying each of the Representations and the Misleading Statements (separately or in combination) to participants in the Oxiana Securities Market the respondent deprived the market of Material Information and/or conveyed to it misinformation which:*

1. *was relevant to the decision of an investor or potential investor in the Oxiana Securities Market as to whether to purchase the respondent's securities; and*

2. *was misleading or deceptive; and/or*

3. *was constituted by an expressions of opinion or statements as to future matters which the respondent did not have reasonable grounds for making.*

C. *Further particulars will be provided following discovery and before the initial trial of common issues.*

86. By reason of each of the respondent's Continuous Disclosure Contraventions in the period between 28 February 2008 and 3 March 2008 (individually or in combination) and the matters pleaded in paragraphs 84 and 85 above, the relative share prices used by Grant Samuel for valuation purposes were not struck in a market apprised of all Material Information such that those contraventions were a cause of the prices at which the respondent's securities traded on the ASX being higher in that period than:

(a) their true value; and/or

(b) the market price(s) at which the securities would have traded if the Contraventions had not occurred.

Particulars

~~*Particulars will be provided after service of the applicant's expert evidence and before the initial trial of common issues*~~*The applicant refers to the report of Mr Frank C Torchio, particularly at para 272.*

87. Further and in the alternative, as a result of:

(a) the respondent's Continuous Disclosure Contraventions in the period between 28 February 2008 and 3 March 2008 (individually or in combination); and/or

(b) the OZL Misleading Conduct Contraventions during that period (individually or in combination);

(i). Zinifex agreed to enter into the MIA such that the merger proceeded;

(ii). alternatively, Zinifex did not agree to a proposed merger on terms by which Zinifex shareholders would receive consideration that was a fair reflection of the relative market and/or true values of the respondent's shares and those of Zinifex;

Particulars

A. The 3 March Announcement confirmed that the future prospects and volume weighted prices of the respondent and Zinifex had purportedly been taken into account in assessing the Scheme Consideration.

B. As a result of the respondent's Continuous Disclosure Contraventions the following were not disclosed to the public or Zinifex or taken into account in determining the proposed Scheme Consideration:

1. *the 8 August Refinancing Deadline and the Cross Default Risk pleaded at paragraphs 13, 19 and 20 above;*

2. *the Oxiana Refinancing Risk as pleaded and particularised at paragraph 35(a) above;*

3. *the Oxiana Development Delay Risk as pleaded and particularised at paragraph 35(b) above;*

4. *the Oxiana Insolvency Risk as pleaded and particularised at paragraph 35(c)(i) above;*

5. *the Oxiana Asset Sale Risk as pleaded and particularised at paragraph 35(c)(ii) above; or*

6. *the Fair Consideration Information.*

C. *Prior to and on 3 March 2008, the respondent made the Implied Continuous Disclosure Representation, the Reasonable Enquiry Representation and, by reason of clause 7.1(i) of the MIA (pleaded at subparagraph 78(d) above), at the time Zinifex and Oxiana entered into the MIA, Oxiana had represented and warranted to Zinifex that it was not in breach of its continuous disclosure obligations under the ASX Listing Rules such that Zinifex relied on its compliance with those norms of conduct in entering into the MIA.*

D. *Had it not been for the contraventions outlined above, Zinifex would have been made aware of the risks outlined in particular B. above and the respondent's share price would have properly reflected those risks and Zinifex, consistently with its duties to its shareholders as pleaded in paragraph 83 above would not have proceeded with the merger on the same terms or at all.*

88. Further, by reason of:

(a) the respondent's Continuous Disclosure Contraventions and/or the OZL Misleading Conduct in the period between 28 February 2008 and 6 May 2008 (the date of the completion of Grant Samuel's report); and

(b) the matters pleaded and particularised in paragraphs 84, 85 and 86 above,

Grant Samuel's assessment of the true underlying value of the respondent in its report was overstated.

Particulars

~~*Particulars will be provided after service of the applicant's expert evidence and before the initial trial of common issues.*~~ *In the absence of the Contraventions, Grant Samuel would or ought to have assessed that the true value of Oxiana was $4,495,372.08 (based on the opinion of Mr Torchio as to the true value of Oxiana's equity as at 6 May 2008 referred to in para 265 of his report).*

89. As a result of the matters pleaded and particularised in paragraphs 84, 85, 86 and 88 above;

(a) Grant Samuel advised the Zinifex directors that the Scheme Consideration was fair to Zinifex shareholders and in their best interests based both on the relative share market values of the respondent and Zinifex and its assessment of the full underlying values of the two companies;

Particulars

(i). *Grant Samuel concluded that the proposed merger was in the interests of Zinifex shareholders based on considerations which included:*

A. the relative share prices of the respondent and Zinifex in the period between 28 February 2008 and the announcement of the merger on 3 March 2008 and in the period between the 3 March Announcement and 6 May 2008;

B. *an express assumption that the share prices considered by it were struck in an active well-informed market;*

C. *an assessment of the underlying 'true' values of the respondent and Zinifex involving judgments about future project potential and discounted cash flow analyses; and*

D. *an assumption that the balance sheet positions of the respondent and Zinifex were consistent with those disclosed in the Scheme Booklet;*

(ii). *The applicant repeats the matters pleaded in paragraphs 86 and 87 above.*

(b) a summary of Grant Samuel's report to the Zinifex directors was included in the Scheme Booklet and a full copy of the report was included in the Scheme Booklet Supplement, both of which were provided or made available to Zinifex shareholders;

(c) further and in the alternative:

(i). Grant Samuel did not advise the Zinifex directors that the Scheme Consideration was not fair to Zinifex shareholders or in their best interests based both on the relative share-market values of the respondent and Zinifex and its assessment of the full underlying values of the two companies; and

Particulars

The applicant repeats the particulars to subparagraph 89(a) above.

(ii). a report or summary report reflecting such advice was not provided or made available to Zinifex shareholders.

90. Further and in the alternative, as a result of:

(a) the respondent's Continuous Disclosure Contraventions in the period between 3 March 2008 and 16 June 2008 (individually or in combination); and/or

(b) the OZL Misleading Conduct Contraventions during that period (individually or in combination); and

(c) the matters pleaded and particularised in paragraphs 79, 83, 84, 85, 86, 88 and 89 above;

(i). the Zinifex directors recommended to Zinifex shareholders to vote in favour of the proposed merger;

(ii). Zinifex shareholders voted in favour of the Scheme such that the merger proceeded.

Particulars

A. *Had the respondent disclosed the Material Price Sensitive Information (or any of it) between 3 March 2008 and 16 June 2008:*

1. *Grant Samuel would not have recommended the proposed merger to the Zinifex directors; and/or*

2. *the Zinifex directors would have become aware of the Material Price Sensitive Information and, consistent with their duties as pleaded in paragraph 83 above, would have advised Zinifex's shareholders of that information and would not have recommended the merger to the Zinifex shareholders; and/or*

3. *prior to the merger vote, the respondent's share price would have properly reflected all of the Material Price Sensitive Information and would not have been inflated by the ~~respondent's~~ OZL ~~misleading~~*

Misleading ~~or deceptive conduct~~Conduct and/or its Continuous Disclosure Contraventions; and/or

4. *for those reasons, if the directors had not terminated the MIA prior to the merger vote, less than 75% of Zinifex shareholders would have voted in favour of the merger such that it would not have proceeded.*

B. *As to Zinifex's right to terminate the Scheme without penalty in the event that shareholder approval was not obtained prior to the Second Court Date, the applicant repeats the matters pleaded and particularised in paragraphs 78(c), 78(f)(ii), 80(a), 80(d), and 80(e) (inclusive) above.*

C. *As to Zinifex's continuing reliance on the respondent's purported compliance with its Continuous Disclosure Obligations and statutory prohibitions on misleading or deceptive conduct, the applicant repeats the matters pleaded and particularised in subparagraphs 78(d)(i)-(iii) above.*

(iii). further and in the alternative, prior to the merger vote, the Zinifex directors did not renegotiate the terms of the MIA and/or the Scheme following an actual or threatened termination of those agreements in order to ensure that the Scheme Consideration was fair to Zinifex shareholders and reflected the relative true underlying values and future prospects of the respondent and Zinifex.

91. Further and in the alternative, as a result of:

(a) the respondent's Continuous Disclosure Contraventions in the period between 3 March 2008 and the Second Court Date (individually or in combination); and/or

(b) the OZL Misleading Conduct Contraventions during that period (individually or in combination); and

(c) the matters pleaded and particularised in paragraphs 79, 83, 84, 85, 86, 88, 89 and 90 above;

(i). Zinifex did not exercise its right to terminate the MIA and the Scheme before the Second Court Date based on advice of Grant Samuel to the effect set out in paragraph 89(c) above;

Particulars

A. *Had the respondent disclosed the Material Price Sensitive Information (or any of it) between 3 March 2008 and the Second Court Date:*

1. *Grant Samuel would not have recommended the proposed merger to the Zinifex directors;*

2. *the respondent's share price would have reflected properly all Material Information and would not have been inflated by the respondent's misleading or deceptive conduct; and*

3. *for those reasons the directors of Zinifex, consistent with their duties to Zinifex shareholders as pleaded in paragraph 83 would have formed the view in good faith (and after consultation in good faith with Oxiana) to change their recommendation to Zinifex shareholders to vote in favour of the Scheme and would have terminated the MIA pursuant to their rights under that document and the Scheme.*

B. *As to Zinifex's right to terminate the Scheme without penalty based on the advice of an the independent expert engaged by it providing a report concluding that the proposed merger was not in the best interests of Zinifex shareholders, the applicant refers to and repeats the matters pleaded and particularised in paragraph 78(f)(i) above.*

(ii). Zinifex did not exercise its right to terminate the MIA and the Scheme before the Second Court Date based on a material breach of the MIA by the respondent such that the merger proceeded.

Particulars

A. *The applicant repeats the matters pleaded and particularised in paragraph 91(c)(i) above.*

B. *Had the respondent disclosed the Material Price Sensitive Information (or any of it) after Zinifex entered into the MIA but before the Second Court Date, Zinifex would have been entitled (and the Zinifex directors would have been duty-bound) to and would have proceeded to terminate the MIA in accordance with the terms of that agreement pleaded at 80(d) and 80(e) above.*

(iii). further or in the alternative, Zinifex did not renegotiate the terms of the MIA and/or the Scheme following an actual or threatened termination of those agreements in order to ensure that the Scheme Consideration was fair to Zinifex shareholders and reflected the relative true underlying values and future prospects of the respondent and Zinifex.

92. Further and in the alternative, as a result of:

(a) the respondent's Continuous Disclosure Contraventions in the period between the Scheme Record Date and the Implementation Date; and/or

(b) the OZL Misleading Conduct during that period; and

(c) the matters pleaded and particularised in paragraphs 79, 84, 85, 86, 88, 89 and 90 above;

Zinifex did not commence proceedings to restrain the implementation of the Scheme prior to the Implementation Date based on the OZL Misleading Conduct and/or the Continuous Disclosure Contraventions and the merger proceeded.

Particulars

A. *Had the respondent disclosed the Material Price Sensitive Information (or any of it) between the Scheme Record Date and the Implementation Date, consistent with their duties to Zinifex shareholders as pleaded in paragraph 83, the directors would have commenced proceedings to terminate the Scheme for the respondent's breach of the Continuous Disclosure Requirements and/or the OZL Misleading Conduct.*

B. *As to Zinifex's right to terminate the MIA and the Scheme without penalty in the event that a Court order was made restraining the Scheme, the applicant repeats the matters pleaded and particularised in sub-paragraph 78(f)(iii) above.*

92A. Further and in the alternative to the matters pleaded in paragraphs 83 to 92 above:

(a) the applicant repeats paragraphs 24C(s), 46A, 69, 70, 71, 72 and 73(iv)-(vii) of the Defence of the fifth respondent (Zinifex) (**Zinifex Defence**) in Federal Court proceedings VID 606 of 2014 (*OZ Minerals Limited v Anthony Charles Larkin & Ors*) (**Zinifex Proceeding**) and says that, by the respondent's misleading or deceptive conduct in contravention of section 1041H of the Corporations Act, section 12DA(1) of the ASIC Act and section 9 of the Fair Trading Act pleaded and particularised in those paragraphs, the applicant and group members have suffered loss and damage.

Particulars

(i) The applicant refers to and repeats the particulars to paragraph 73 of the Zinifex Defence and says that, had the respondent not made the Oxiana Representations pleaded and particularised therein:

A. Zinifex would not have approved the Scheme Booklet and dispatched it to Zinifex shareholders; and

B. the Scheme would not have been approved by Zinifex's shareholders and, accordingly, would not have been implemented.

(ii) As to (i) the applicant additionally refers to and repeats:

1. paragraphs 34B, 43A, 43B, 53A, 60 and 62A(a) and 62A(c) of the defence of the first to third respondents in the Zinifex Proceedings; and

2. paragraphs 34B, 43A to 43C, 60 and 62A(a) and 62A(c) of the defence of the fourth respondent in the Zinifex Proceeding.

(iii) The applicant says further that, but for the respondent having made (alone or in combination) each of the First Oxiana Representation, Third Oxiana Representation and (and to the extent it refers to those representations) the Seventh Oxiana Representation (as respectively pleaded and particularised in paragraphs 69(a), 69(c) and 69(g) of the Zinifex Defence) Zinifex would not have entered into the MIA or the Scheme on terms which included the Scheme Consideration, or at all.

(b) the applicant repeats:

(a) paragraphs 29(f) and 71 – 86 of the defence of Grant Samuel (**Grant Samuel Defence**) in Federal Court proceedings no. VID 604 of 2014 (*OZ Minerals Limited v Grant Samuel & Associates Pty Ltd*); and

(b) the definition of "Drawdown Information" and "Refinancing Information" in the particulars to paragraphs 38(d)(i) and 38(d)(ii) of the Grant Samuel Defence,

and says that that, by the respondent's misleading or deceptive conduct in contravention of section 1041H of the Corporations Act, section 12DA(1) of the ASIC Act and section 9 of the Fair Trading Act pleaded and particularised in those paragraphs, the applicant and group members have suffered loss and damage.

Particulars

The applicant repeats the particulars to paragraphs 77, 80, 83 and 86 of the Grant Samuel Defence and says that, but for the respondent's misleading or deceptive conduct, the merger would not have proceeded or would not have proceeded on terms that were unfair to the applicant and the group members.

93. Further and in the alternative, in deciding to retain his Zinifex shares in the period between the merger announcement and the Scheme Record Date, the applicant relied on the Fair Market Price Representation, the Relative Market Value Representation, First Balance Sheet Representation, Implied First Balance Sheet Representation, the Implied Continuous Disclosure Representation and the Reasonable Enquiry Representation (individually and in combination).

94. Further and in the alternative, in deciding to purchase and/or retain their Zinifex shares in the period between the merger announcement and the Scheme Record Date, some group members relied one or more of the Representations and/or one or more of the Misleading Statements.

Particulars

The identity of all those group members which or who relied directly on the representations pleaded in this paragraph are not known with the current state of the applicant's knowledge and cannot be ascertained unless and until those advising the applicant take

detailed instructions from all group members on individual issues relevant to the determination of those individual group members' claims; those instructions will be obtained (and particulars of the identity of those group members will be provided) following the determination of common issues and if and when a determination is to be made of the individual claims of those group members.

V. Loss and damage

95. In the premises of the matters pleaded and particularised in paragraphs 80 to 94 above (inclusive), by reason of the Contraventions, the applicant and the group members suffered loss and damage.

Particulars

Scenario 1 – "no transaction" case (sub-paragraphs 87(b)(i), 90(b), 91(b), 92, ~~and~~ 92A)

(a) The difference between:

(i) the position that the applicant and group members who were Eligible Shareholders are in today as a result of having acquired and held shares in the respondent as a result of the merger, or sold them after the Implementation Date (or in the case of Ineligible Foreign Shareholders, having acquired the proceeds of sale of the Scheme Consideration to which they were entitled as part of the merger); and

(ii) the position that the applicant and the group members would have been in had the merger not proceeded.

(b) Further particulars of the applicant's loss and damage calculated on this basis will be provided after completion of the applicant's expert evidence.

(c) Further particulars of group member losses will be provided, if necessary, after the initial trial of common issues.

Scenario 2 – Scheme Consideration based on the market prices that would have prevailed in the absence of the contraventions and the true value of the respondent's shares (sub-paragraphs 87(b)(ii), 91(c), ~~and~~ 92A)

(d) In the alternative to scenario 1, the difference between:

(i) the Scheme Consideration paid to the applicant and group members; and

(ii) the value of the consideration that ought to have been paid to the applicant and the group members to reflect the relative market prices of Zinifex and the respondent and/or the true underlying value of each company as at:

~~*A. the relative market prices of Zinifex and the respondent during the period between 28 February 2008 and 2 March 2008 that would have prevailed if the respondent had not engaged in the OZL Misleading Conduct and/or the Continuous Disclosure Contraventions; and*~~

A. ~~the true underlying value of each company as at~~at the date of the MIA (2 March 2008);

B. the date on which Grant Samuel completed its independent expert's report (6 May 2008);

C. the date of completion of the Scheme Book and the Scheme Book Supplement (9 May 2008);

D. the date of the merger vote (16 June 2008);

E. the Second Court Date (20 June 2008); or

F. the Scheme Record Date.

(iii) as to the Scheme Consideration that ought to have prevailed on each of the dates referred to in particular (ii.), the applicant refers to the expert report of Mr Frank Torchio dated 27 October 2015 at paras 265-266;

(e) alternatively, the difference between the market price of the respondent's securities transferred to the applicant and the group members who were Eligible Scheme Shareholders as Scheme Consideration and the true value of those securities as at the Implementation Date (1 July 2008);

(f) As to the true value of Oxiana as at 1 July 2008 and the exchange ratio that ought to have applied as at that date, see the report of Mr Torchio at paras 265-266. ~~Further particulars will be provided after completion of the applicant's expert evidence and before trial~~.

Scenario 3 – direct reliance (paragraphs 93 and 94)

(g) In the alternative to scenarios 1 and 2:

(i) ~~The~~ the difference between:

1. the position that the applicant and group members who relied on one or more of the Representations are in today as a result of having acquired and held shares in the respondent, or having sold ~~them~~some or all of those shares after the Implementation Date (or in the case of Ineligible Foreign Shareholders, having acquired the proceeds of sale of the Scheme Consideration to which they were entitled as a result of the merger); and

2. the position that the applicant and those group members would have been in had they sold some or all of their shares in ~~the respondent~~Zinifex prior to the Scheme Record Date or between the Implementation Date and the Disclosure Date and pursued alternative trading strategies with the proceeds; or

(ii) *(in the alternative to (g)(i)), the amount that the applicant and group members who relied on one or more of the Representations would have received on sale of some or all of their Zinifex shares had they sold them prior to the Scheme Record Date as a result of knowing the true position.*

~~(g)~~*(h)* ***Further particulars of the applicant's losses calculated on this basis will be provided*** ~~***on service of expert evidence***~~***.***

~~(h)~~*(i)* ***Further particulars of the group member losses calculated on this basis will be provided, if necessary, after the initial trial of common issues.***

Scenario 4 – Quantum of fall in respondent's share price after release of Material Information

(j) In the alternative to scenarios 1 to 3, for the days after the Relevant Period where the traded price of the respondent's securities fell as a result of the disclosure of Material Information which had not previously been disclosed to the market because of the Contraventions, the quantum of that fall.

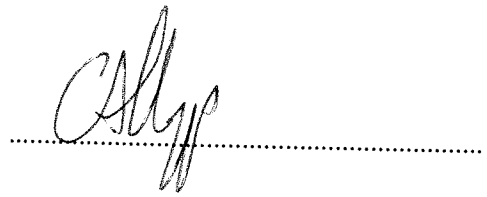
Scenario 5 – amount "left in hand" after sale of respondent's shares

~~(i)~~*(k)* *In the alternative to scenarios 1 to 4, the difference between the market value of the Zinifex securities held by the applicant and the group members at the Scheme Record Date and the amount "left in hand" upon the sale by those persons of their securities in the respondent (which they received as Scheme Consideration) after the release of the Material Information, modified to take into account so much of the movement in the traded price of the respondent's securities which did not result from the Contraventions.*

96. The applicant claims the relief specified in the application on his behalf and on behalf of group members.

This pleading was prepared by Guy Donnellan of Counsel with the assistance of J C Conde, of Counsel, Craig Allsopp, solicitor, and settled by M B J Lee SC.

Dated: ~~17 March~~ 7 December 2015



Craig Allsopp
Solicitor for the Applicant

CERTIFICATE OF LEGAL PRACTITIONER

(Order 11, rule 18)

I, Craig Allsopp, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~17 March~~7 December 2015

.....

Craig Allsopp
Solicitor for the Applicant

SCHEDULE 1 – DEFINITIONS

I Date specific terms (listed in chronological order)

2007 Annual Results means the 2007 Financial Report, 2007 Results Presentation and 2007 Results Summary as described in paragraph 14.

2007 Financial Report means the 113 page document entitled "Oxiana Limited Financial Report 31 December 2007" described in subparagraph 14(a).

2007 Results Presentation means the 25 page document entitled "Oxiana Limited Financial Results 31 December 2007 Presentation" described in subparagraph 14(b).

2007 Results Summary means the document entitled "Oxiana Limited Financial Results Summary 31 December 2007" described in subparagraph 14(c).

3 March Announcement means the document entitled "Australian Stock Exchange and Media Release: Oxiana and Zinifex to Merge to Create a Major Diversified Mining Company" described in subparagraph 21(a).

3 March Briefing means the joint investor briefing given by the respondent and Zinifex as described in subparagraph 21(b).

16 April Briefing means the presentation of the Quarterly Report to investors via webcast described at subparagraph 23(b).

17 April 2008 AGM means the respondent's annual general meeting held on 17 April 2008 and webcast live on the respondent's website.

8 August Refinancing Deadline means the 8 August 2008 deadline referred to in paragraph 13 by which the respondent was to refinance its outstanding drawings under the US Debt Facilities. ~~ANZ means the Australia and New Zealand Banking Group.~~

25 November Announcement means the document entitled "ASX Release – OZ Minerals to defer projects and cut operating costs" described in paragraph 39.

II Non date-specific terms (listed in alphabetical order)

AGM Debt Opinion Representation means the Representation pleaded at paragraph 27A.

AGM Representation means the Representation pleaded at subparagraph 27(a).

AGM Statement means the statement made by Mr Hegarty during the 17 April 2008 AGM pleaded at paragraph 26A.

ANZ means the Australia and New Zealand Banking Group.

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth).

ASX means the Australian Securities Exchange Limited.

Australian Accounting Standards means accounting standards promulgated by the AASB pursuant to section 334 of the Corporations Act.

BNP means BNP Paribas – Melbourne Branch.

BOSI means BOS International (Australia) Ltd.

CBA means the Commonwealth Bank of Australia.

China Construction Bank means the China Construction Bank Corporation – Hong Kong Branch.

Comfortable Debt Position Opinion Representation means the Representation pleaded at subparagraph 25(c1).

Continuous Disclosure Contraventions means the contraventions pleaded at paragraphs 13 to 20~~, 33 to 37~~ and 41 to ~~64~~ 48 (inclusive).

Continuous Disclosure Representation means the Representation pleaded at paragraph 30(a).

Continuous Disclosure Requirements means the continuous disclosure requirements set out in section 674 of the Corporations Act.

Continuous Disclosure Statement means the text of the Scheme Booklet attributable to the respondent pleaded at paragraph 29A.

Contraventions means the Continuous Disclosure Breaches and the OZL Misleading Conduct.

Corporations Act means the *Corporations Act 2001* (Cth).

Cross Default Risk means the risk described in paragraph 20(b).

Current Liabilities Representation means the Representation pleaded in paragraph 30(d).

Current Liability Position means the current liability position of the respondent at 31 March 2008 as described in paragraph 19.

Debt Under Control Opinion Representation means the Representation pleaded in subparagraph 25(a1).

Disclosure Date means 25 November 2008, being the date on which the respondent made the disclosures to the market referred to in paragraph 39.

Effective Date means the date the Court made orders under section 411(4)(b) of the Corporations Act approving the Scheme as referred to in paragraph 80(a).

Eligible Scheme Shareholders means the persons described in paragraph 80(b).

Fair Consideration Information means the information described in subparagraph 36(b)(iii).

Fair Market Price Representation means the Representations described in subparagraphs 22(a) and 22(b).

FCA means the *Federal Court of Australia Act 1976* (Cth).

First 16 April Debt Position Exchange means the oral exchange between Mr Hegarty and Nathan Littlewood of Credit Suisse during the 16 April Briefing pleaded at paragraph 24(a).

First Balance Sheet Statement means the statement pleaded at paragraph 21A(b).

First 16 April Debt Representation means the Representation pleaded in paragraph 25(a).

First Balance Sheet Representation means the Representations pleaded in subparagraph 22(d).

First Zinifex Cash Risk means the risk described in subparagraph 37(c).

FTA means the *Fair Trading Act 1999* (Vic).

Financing Risks Statement means the text of the Scheme Booklet attributable to the respondent pleaded at paragraph 29B.

Grant Samuel Representation means the Representation pleaded in paragraph 31.

Group Members means the persons on whose behalf the applicant bring the proceedings pursuant to Part IVA of the FCA as described in subparagraph 1(c).

HVB means the Bayerische Hypo-und Vereinsbank AG – Singapore Branch.

Implementation Date means three business days after the Scheme Record Date, or on such other date as the respondent and Zinifex agreed in writing.

Implied Continuous Disclosure Representation means the Representation pleaded in subparagraph 32(a).

Implied First Balance Sheet Representation means the Representation pleaded in paragraph 22(e).

Ineligible Foreign Shareholders means the Zinifex shareholders described in subparagraph 80(c).

Initial Participants means ANZ, BNP, CBA and ANZ.

LNSA means the Loan Note Subscription Agreement described in paragraph 3.

LNSA Lenders means ANZ, BNP, BOSI, CBA, HVB, NAB and RBS.

Material Information means all information required to be disclosed by a disclosing entity pursuant to section 674 of the *Corporations Act* and Rule 3.1 of the *ASX Listing Rules*.

Material Price Sensitive Information means the Material Information referred to in paragraphs 49 to 64.

Merger Asset Sale Risk means the risk described in subparagraph 37(e).

Merger Consideration Statements means the statements pleaded at paragraph 21A(a).

Merger Development Delay Risk means the risk described in subparagraph 37(b).

Merger Refinancing Risk means the risk described in subparagraph 37(a).

Merger Risks means the Merger Refinancing Risk, the Merger Development Delay Risk, the First Zinifex Cash Risk, the Second Zinifex Cash Risk and the Merger Asset Sale Risk.

Mezzanine Facility means the agreement made on 28 February 2008 between the respondent and a number of its subsidiaries and ANZ and RBS to provide cash facilities up to USD $140 million as described in paragraph 9.

Mezzanine Lenders means ANZ and RBS.

Misleading Statements means collectively and individually, each of the statements made by the respondent in the First 16 April Debt Position Exchange and the Second 16 April Debt Position Exchange, the AGM Statement, the Continuous Disclosure Statement and the No Material Change Statement.

Mr Hegarty means Owen Hegarty, the Chief Executive Officer of Oxiana during the Relevant Period.

Mr Michelmore means Andrew Michelmore, the Managing Director and Chief Executive Officer of Zinifex during the Relevant Period.

NAB means the National Australia Bank.

No Material Change Representation means the Representation pleaded in subparagraph 30(c).

No Material Change Statement means the text of the Scheme Booklet attributable to the respondent pleaded at paragraph 29B.

November 2008 Deadline has the meaning given in paragraph 9A.

Oxiana means Oxiana Limited, the name by which the respondent was known prior to 23 July 2008.

Oxiana Asset Sale Risk means the risk described in subparagraph 35(c)(ii).

Oxiana Development Delay Risk means the risk described in subparagraph 35(b).

Oxiana Finance means Oxiana Finance Pty Ltd, a wholly owned subsidiary of the respondent.

Oxiana Insolvency Risk means the risk described in subparagraph 35(c)(i).

Oxiana Refinancing Risk means risk described in subparagraph 35(a).

Oxiana Risks means the Oxiana Refinancing Risk, the Oxiana Development Delay Risk, the Oxiana Insolvency Risk and the Oxiana Asset Sale Risk.

OZL Misleading Conduct means the respondent's misleading or deceptive conduct pleaded at paragraphs 21 to 37 and 65 to 77.

Oxiana Securities Market means the market comprised by the class of people and entities who were at the applicable time, investors and potential investors in the respondent's securities.

Planned Refinance Representation means the Representation pleaded in subparagraph 30(e).

Q3 Report means the respondent's Quarterly Report for three months ending 31 March 2008 as described in subparagraph 23(a).

Q3 Slide Presentation means the slide presentation entitled "Oxiana Limited First Quarter Report 2008" described in subparagraph 23(a).

RBS means the Royal Bank of Scotland – Australia Branch.

Reasonable Enquiry Representation means Representation pleaded in subparagraph 32(b).

Refinancing Agreement means the agreement made on 28 February 2008 to refinance the US Debt Facilities described in paragraph 12.

Relative Market Value Representation means Representation pleaded in subparagraph 22(c).

Relevant Period means the period of 28 February 2008 to 1 July 2008.

Representations mean each of:

(i). the Fair Market Price Representation;

(ii). the Relative Market Value Representation;

(iii). the First Balance Sheet Representation;

(iv). the Implied First Balance Sheet Representation;

(v). the First 16 April Debt Representation;

(vi). Debt Under Control Opinion Representation;

(vii). the Second 16 April Debt Representation;

(viii). the Third 16 April Debt Representation;

(ix). Comfortable Debt Position Opinion Representation;

(x). the AGM Representation;

(xi). AGM Debt Opinion Representation;

(xii). the Continuous Disclosure Representation;

(xiii). the No Material Change Representation;

(xiv). the Current Liabilities Representation; and

(xv). the Planned Refinance Representation.

Scheme means the Scheme of Arrangement between Zinifex and its shareholders referred to in subparagraph 78(a).

Scheme Booklet means the document entitled "Explanatory Memorandum of Scheme of Arrangement in relation to the proposed merger of Zinifex Limited and Oxiana Limited" referred to in subparagraph 28(a).

Scheme Booklet Supplement meansπ the document entitled "Scheme Book Supplement for Scheme of Arrangement in relation to the proposed merger of Zinifex Limited and Oxiana Limited" referred to in subparagraph 28(b).

Scheme Consideration means the consideration Zinifex shareholders received under the Scheme as described in subparagraph 78(b).

Scheme Record Date means 7.00pm 4 business days after the Effective Date.

Second 16 April Debt Position Exchange means the oral exchange between Mr Hegarty and Geoff Breen of RBC Capital Markets during the 16 April Briefing pleaded at paragraph 24(b).

Second 16 April Debt Representation means the Representation pleaded in subparagraph 25(b).

Second Court Date means the first day set down for the hearing of the application for Court approval of the Scheme.

Second Zinifex Cash Risk means the risk described in subparagraph 37(d).

Third 16 April Debt Representation means the Representation pleaded in subparagraph 25(c).

US Debt Facilities means the LNSA facilities and Mezzanine Facility.

Zinifex means Zinifex Limited.

Zinifex Defence means the defence filed by Zinifex in the Zinifex Proceeding.

Zinifex Proceeding means Federal Court proceedings VID 606 of 2014 (*OZ Minerals Limited v Anthony Charles Larkin & Ors*).

ANNEXURE A
APPLICANT'S TRADING HISTORY - ZFX/OZL SHARES

Trade Date	Stock Code	Buy / Sell	No. of shares	Average Price	Brokerage	Total amount	Cumulative total shares
10/09/2007	ZFX	B	10000	$16.05	$192.60	$160,692.60	10000
11/09/2007	ZFX	B	7000	$15.66	$131.54	$109,751.54	27000
11/09/2007	ZFX	B	10000	$15.80	$189.60	$158,189.60	20000
17/10/2007	ZFX	S	-27000	$17.71	$573.85	$477,638.22	0
07/11/2007	ZFX	B	10000	$15.45	$187.34	$154,687.34	40000
07/11/2007	ZFX	B	30000	$15.66	$565.70	$470,365.70	30000
09/11/2007	ZFX	B	10000	$15.52	$188.19	$155,388.19	50000
12/11/2007	ZFX	B	20000	$14.85	$358.23	$297,258.23	70000
21/11/2007	ZFX	S	-70000	$15.02	$1,263.23	$1,049,816.58	0
29/11/2007	ZFX	B	75000	$14.25	$1,284.10	$1,069,753.02	75000
11/12/2007	ZFX	S	-75000	$15.30	$1,379.24	$1,146,367.22	0
19/12/2007	ZFX	B	80000	$12.65	$1,216.34	$1,013,216.34	80000
04/01/2008	ZFX	B	5000	$12.13	$74.73	$60,724.73	85000
17/03/2008	ZFX	S	-1000	$10.25	$31.90	$10,218.10	84000
31/03/2008	ZFX	S	-1000	$10.02	$31.90	$9,988.89	83000
18/04/2008	ZFX	S	-500	$10.36	$21.90	$5,158.10	82500
21/04/2008	ZFX	S	-500	$10.24	$21.90	$5,098.10	82000
06/05/2008	ZFX	S	-1000	$9.31	$21.90	$9,288.10	80000

Trade Date	Stock Code	Buy / Sell	No. of shares	Average Price	Brokerage	Total amount	Cumulative total shares
26/05/2008	ZFX	S	-1000	$10.16	$31.90	$10,128.10	81000
ZFX shares converted to OZL shares							255,448
05/08/2008	OZL	S	-1000	$1.69	$21.90	$1,665.88	259,159
11/08/2008	OZL	S	-1000	$1.80	$21.90	$1,778.10	258,159
25/08/2008	OZL	S	-1000	$1.86	$21.90	$1,838.10	257,159
01/09/2008	OZL	S	-1000	$1.72	$21.90	$1,693.10	256,159
18/09/2008	OZL	S	-1000	$1.39	$21.90	$1,363.10	255,159
22/09/2008	OZL	S	-1000	$1.55	$21.90	$1,523.10	254,159
29/09/2008	OZL	S	-1000	$1.74	$21.90	$1,718.10	253,159
09/10/2008	OZL	S	-2000	$1.27	$21.90	$2,518.10	251,159
17/10/2008	OZL	S	-1000	$1.02	$21.90	$998.10	250,159
27/10/2008	OZL	S	-1000	$0.85	$21.90	$828.10	249,159
03/11/2008	OZL	S	-1000	$1.00	$21.90	$981.55	248,159
06/11/2008	OZL	S	-100000	$1.00	$121.95	$99,878.05	148,159
24/11/2008	OZL	S	-1000	$0.62	$21.90	$593.10	147,159
18/02/2009	OZL	S	-140000	$0.62	$105.27	$85,994.73	7,159
23/03/2009	OZL	S	-7159	$0.62	$21.90	$4,416.68	0

SCHEDULE OF PARTIES

Federal Court of Australia

No. VID 114 of 2014

District Registry: Victoria

Division: General

TOBIAS MITIC

Applicant

OZ MINERALS LIMITED (ACN 005 482 824)

Respondent

OZ MINERALS LIMITED (ACN 005 482 824)

Cross-Claimant

ALLENS (A FIRM)

Cross-Respondent

ALLENS (A FIRM)

Cross-Claimant

GRANT SAMUEL & ASSOCIATES PTY LTD

First Cross-Respondent to Allens' Cross-Claim

ANTHONY CHARLES LARKIN

Second Cross-Respondent to Allens' Cross-Claim

DEAN PRITCHARD

Third Cross-Respondent to Allens' Cross-Claim

RICHARD KNIGHT

Fourth Cross-Respondent to Allens' Cross-Claim

ANTHONY BARNES

Fifth Cross-Respondent to Allens' Cross-Claim

OZ MINERALS HOLDINGS LIMITED

Sixth Cross-Respondent to Allens' Cross-Claim

OWEN HEGARTY

Seventh Cross-Respondent to Allens' Cross-Claim

BRIAN JAMIESON

Eighth Cross-Respondent to Allens' Cross-Claim

RONALD BEEVOR

Ninth Cross-Respondent to Allens' Cross-Claim

BARRY CUSACK

Tenth Cross-Respondent to Allens' Cross-Claim

JEFFREY SELLS

Eleventh Cross-Respondent to Allens' Cross-Claim

CLAYTON UTZ (A FIRM)

Twelfth Cross-Respondent to Allens' Cross-Claim

OZ MINERALS LTD

Thirteenth Cross-Respondent to Allens' Cross-Claim